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IMPACT OF AN ALIEN VERIFICATION SYSTEM ON ASSISTED HOUSING PROGRAMS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY DEVELOPMENT

OF THE

COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS

AND THE

SELECT COMMITTEE ON AGING

OF THE

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 3810

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT
TO REVISE AND REFORM THE IMMIGRATION LAWS,
AND FOR OTHER PURPOSES

AUGUST 6, 1986

Subcommittee on Housing and Community Development
Serial No. 99-100

Select Committee on Aging
Serial No. 99-584

Printed for the use of the Committee on Banking, Finance and Urban Affairs
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IMPACT OF AN ALIEN VERIFICATION SYSTEM ON ASSISTED HOUSING PROGRAMS

WEDNESDAY, AUGUST 6, 1986

House of Representatives, Subcommittee on Housing and Community Development, Committee on Banking, Finance and Urban Affairs, and Select Committee on Aging,

Washington, DC.

The subcommittee and select committee met, pursuant to call, at 9:30 a.m., in room 334, Cannon House Office Building, Hon. Henry B. Gonzalez (chairman of the Subcommittee on Housing and Community Development) and Hon. Edward R. Roybal (chairman of the Select Committee on Aging) presiding.

Present from the Subcommittee on Housing and Community Development: Chairman Gonzalez, Representatives Carper, Torres, McKinney, Wortley and Ridge.

Present from the Select Committee on Aging: Chairman Edward R. Roybal, Representatives Shumway, Saxton, Bentley and Schuette.

Chairman Gonzalez. The subcommittee will please come to order.

We are running a little late and the House will be in session at 10 o'clock and we know we expect to be interrupted, so I thought we better proceed and the moment Chairman Roybal joins us we will recognize him as cochairman at this hearing.

We do have present not only a very distinguished member of the subcommittee, that is the Subcommittee on Housing and Community Development, but a very distinguished leader in his own right, that like some of us, does emanate from the Hispanic or Mexican-American community. We also have Mr. Wortley, and Mr. Saxton who is I understand, a member of Mr. Roybal's committee.

The Committee on Banking, Finance and Urban Affairs and the Subcommittee on Housing and Community Development, and the Select Committee on Aging, chaired by Congressman Roybal, have joined today in this hearing to assess the impact of the application of the Systematic Alien Verification for Entitlements [SAVE] program on federally assisted housing programs as required by H.R. 3810, the Immigration and Legalization Amendments of 1986, which was recently reported by the House Judiciary Committee.

The Banking Committee has received sequential referral over the provision of H.R. 3810, the immigration bill, relating to federally assisted housing programs. Since the deadline for responding to the sequential referral was August 5, yesterday the committee forwarded recommended changes to the Judiciary Committee, which would conform the provisions of H.R. 3810 to a recently house-passed Roybal-Dornan amendment to H.R. 1, the Housing Act of 1986.

That amendment would provide that families which have at least one citizen or legal alien in the household would be allowed to apply for or remain in assisted housing; and elderly persons, aged 62 years or older, would only have to certify their citizenship status; which is what we do in every other Federal program.

The amendment is intended to block the implementation of HUD final regulations due to go into effect on September 30, 1986, which would severely limit assistance to families containing aliens and would cause the displacement of thousands of currently assisted families and elderly persons even when those families contained eligible family members, or as the case in our area, elderly persons who came to the United States perhaps brought over as children carried in the arms of their parents, and who are today 70, 75, 80 years old, and cannot quite document their citizenship but nevertheless are as legally here as any one of us could be.

This is the fear in our part of the country, in the Southwest where this is a fact of life. We do have hundreds of citizens who have been in the United States, paid their taxes, had their children fight and die in time of war for this country, who are elderly, and who came over at a time when the present restrictions that we have become accustomed to weren't in vogue.

We must remember that in 1924 the Congress passed the first real Immigration Control Act and that up to then, persons like my parents, for instance, would come back and forth freely for decades. All they would have to do is pay a nickel at the bridge which was privately owned, and therefore had a toll of a nickel at the time. But there was no such thing as an immigration agent or customs official.

This to a certain extent still exists along the border on your daily cross-border individuals that come to and fro constantly, it is a ceaseless intercourse between citizens right across the border and citizens on our side of the border, some going to work on one side and some coming to work on the other side every day. The fact is that we don't have any serious problem of aliens attempting to reside in any kind of assisted housing or any other kind of governmental programs.

They are usually frightened individuals, scared to be anywhere near officialdom, that is the last thing they want. They are not about to go apply for public housing. At least not in San Antonio where the housing director has reported up to now no presence of any really known, certified alien living illegally in a public housing project in San Antonio.

So that the hearings today I think will bring out these facts.

At this point, I will recognize Mr. Torres, who came here early at the outset of this hearing for any comments he may wish to make at this point.

[The following was submitted for inclusion in the record at this point: The text of H.R. 3810 and the opening statement of Mr. Gonzalez.]

99th CONGRESS
2d Session

H. R. 3810

[Report No. 99–682, Part I]

To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 21, 1985

Mr. Rodino (for himself and Mr. Mazzoli) introduced the following bill; which was referred to the Committee on Judiciary

July 16, 1986

Reported with an amendment and referred for a period ending not later than July 28, 1986, to the Committees on Agriculture, Banking, Finance and Urban Affairs, Education and Labor, Energy and Commerce, Post Office and Civil Service, and Ways and Means, for consideration of such portions of the bill and amendment as fall within those committees' jurisdiction pursuant to clauses 1(a), 1(d), 1(g), 1(h), 1(o), and 1(v) of rule X, respectively

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on November 21, 1985]

A BILL

To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Control and Legalization Amendments Act of 1986".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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Sec. 501. Reimbursement of States and localities for costs of incarcerating illegal aliens and certain Cuban nationals.

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

SEC. 101. CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL.—(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) In General.—It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (g)) with respect to such employment, or

"(B) an individual without complying with the requirements of subsection (b).

"(2) Continuing employment.—It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) Defense.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (g)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

"(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of sub-

section (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs (and, to the extent applicable, paragraph (7)(C)):

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION AND VALIDATION OF SOCIAL SECURITY ACCOUNT NUMBER.—

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form established or designated by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States—

"(i) by examining—

"(I) the individual's United States passport, or the individual's unexpired foreign passport, if the foreign passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States, or

"(II) a document described in subparagraph (B) and a document described in subparagraph (C); and

"(ii) by validating (to the extent and in the manner required under paragraph (7)(C)) the social security account number presented by the individual.

A person or entity has complied with the requirement of clause (i) of this subparagraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of clause (i), nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

"(B) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is the individual's—

"(i) social security account number card issued by the Social Security Administration,

"(ii) certificate of birth in the United States or United States consular report of birth, or

"(iii) in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, any other identification acceptable to the Attorney General.

"(C) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is the individual's—

"(i) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

"(ii) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

"(iii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury and on the form designated or established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

"(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during such period as the Attorney General shall specify in regulations.

"(4) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(5) TIME FOR COMPLIANCE.—A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity.

"(6) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

"(7) SOCIAL SECURITY ACCOUNT NUMBER VALIDATION SYSTEM.—

"(A) ESTABLISHMENT OF SYSTEM.—The Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services,

shall establish a method to validate the social security account numbers of individuals applying to be hired, or recruited or referred for a fee, for employment in the United States.

"(B) PUBLICATION.—The Attorney General shall provide for publication in the Federal Register of notice of the establishment of the validation method and the procedures for its use not earlier than 6 months, and not later than 18 months, after the date of the enactment of this section.

"(C) IMPLEMENTATION.—Beginning on an effective date (not earlier than 90 days, and not later than 180 days, after the date final regulations are published under subparagraph (B)) set forth by the Attorney General, in order to comply with the requirement of paragraph (1)(A) of this subsection in the case of a person or other entity hiring, or recruiting or referring for a fee, an individual for employment in the United States, the person or other entity must, pursuant to the verification method—

"(i) submit the social security account number of the individual, and

"(ii) be provided and record on the form designated or established for purposes of that

paragraph a validation code indicating that the number submitted is valid.

"(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(d) PENALTIES.—

"(1) CIVIL MONEY PENALTY FOR UNLAWFUL EMPLOYMENT, RECRUITING, OR REFERRAL.—

"(A) IN GENERAL.—In the case of a person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated paragraph (1)(A) or (2) of subsection (a) and which—

"(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $1,000, and not more than $2,000, for each unauthorized alien with respect to whom the violation occurred, or

"(ii) has previously been determined (after opportunity for a hearing under para-

graph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $2,000, and not more than $5,000, for each unauthorized alien with respect to whom the violation occurred.

In determining the level of civil penalty that is applicable under this subparagraph for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

"(B) CRIMINAL PENALTY FOR PATTERN OR PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or

(2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

"(3) CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—A person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of not less than $250 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, and the history of previous violations.

"(4) ADMINISTRATIVE PROCESS.—

"(A) HEARING.—

"(i) IN GENERAL.—Before assessing a civil penalty against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and,

upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(ii) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

"(iii) JUDICIAL REVIEW.—A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within 60 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(B) COLLECTION OF CIVIL PENALTIES.—If the person or entity against whom a civil pen-

alty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the appropriate district court of the United States.

"(5) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(e) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph

(1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(f) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

"(g) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (1) an alien lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General.".

(2) Except as provided in paragraphs (3), (4), and (5), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) During the six-month period beginning on the first day of the first month after the date of the enactment of this Act—

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act, and

(B) the Attorney General shall not conduct any proceeding, nor impose any penalty, under such section on the basis of any violation alleged to have occurred during the period.

(4) In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a

violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(5)(A) Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under section 274A of the Immigration and Nationality Act on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B)(i) During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 210(a)(2) of the Immigration and Nationality Act (relating to performance of seasonal agricultural services).

(iii) A person, entity, or agent that violates clause (i) shall be deemed to be subject to a penalty under section 274A(d) of the Immigration and Nationality Act in the same manner as if it had violated section 274A(a)(1)(A) of such Act, without regard to paragraph (4) of this subsection.

(C) In this paragraph:

(i) The term "application period" means the period described in section 210(a)(1) of the Immigration and Nationality Act (as added by section 302(a) of this Act).

(ii) The term "seasonal agricultural services" has the meaning given such term in section 210(g) of the Immigration and Nationality Act (as added by section 302(a) of this Act).

(iii) The term "unauthorized alien" has the meaning given such term in section 274A(g) of the Immigration and Nationality Act.

(6) The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

(b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.—Chapter 8 of title II is further amended by inserting after section 274A, as inserted by subsection (a)(1), the following new section:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964,

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government

contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government, or

"(D) discrimination against an individual on the basis of the individual's English language skill in those certain instances where the English language skill is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

"(ii) evidences an intention to become a citizen of the United States through complet-

ing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

"(b) CHARGES OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation

and shall contain such information as the Attorney General requires. The person filing a charge shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related

Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (i)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(d) INVESTIGATION OF CHARGES.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and,

within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

"(2) Private actions.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) Time limitations on complaints.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such

charge is made. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to

the extent practicable, before such judges who only consider cases under this section.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena

may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order.

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the testimony taken, an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physicially separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the testimony taken an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(i) APPLICATION OF CERTAIN NLRB PROCEDURES.—

"(1) IN GENERAL.—The provisions of subsections (d), (e), (f), (g), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that—

"(A) the authority of the General Counsel or the National Labor Relations Board under subsections (d), (f), and (g) and the second through seventh sentences of subsection (e) shall be exer-

cised for purposes of this paragraph through the Special Counsel or the administrative law judge involved, respectively, and

"(B) the authority of the National Labor Relations Board under subsection (j) and the first sentence of subsection (e) shall be exercised for purposes of this paragraph through the Special Counsel.

"(2) AWARDING OF ATTORNEYS' FEES.—In any proceeding referred to in paragraph (1), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.".

(c) CONFORMING AMENDMENTS TO MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97–470) is amended—

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(d) NO EFFECT ON EEOC AUTHORITY.—Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of un-

lawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), or any other authority provided therein.

(e) Conforming Amendment to Table of Contents.—The table of contents is amended by inserting after the item relating to section 274 the following new items:

"Sec. 274A. Unlawful employment of aliens.
"Sec. 274B. Unfair immigration-related employment practices.".

SEC. 102. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

(a) Application to Additional Documents.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into

or as evidence of authorized stay or employment in the United States";

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000";

(5) by inserting "(a)" before "Whoever" the first place it appears; and

(6) by adding at the end the following new subsections:

"(b) Whoever uses—

"(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

"(2) an identification document knowing (or having reason to know) that the document is false, or

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than $5,000, or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Orga-

nized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).".

(b) CONFORMING AMENDMENT TO TABLE OF SECTIONS.—The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents.".

PART B—IMPROVEMENT OF ENFORCEMENT AND SERVICES

SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) TWO ESSENTIAL ELEMENTS.—Two essential elements of the program of immigration control and reform established by this Act are—

(1) an increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS AND EOIR.—In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice—

(1) for the Immigration and Naturalization Service, for fiscal year 1986, $422,000,000, and for fiscal year 1987, $419,000,000; and

(2) for the Executive Office of Immigration Review, for fiscal year 1986, $12,000,000, and for fiscal year 1987, $15,000,000.

(c) USE OF FUNDS FOR IMPROVED SERVICES.—Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service.

(d) DATA PROCESSING REQUIREMENTS OF THE INS.—(1) The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate, and to any other appropriate committees of the Congress, not later than six months after the date of the enactment of this Act, on the results of a comprehensive analysis of the data processing requirements of the Immigration and Naturalization Service. The report shall include—

(A) an assessment of the data processing needs of the Service, and

(B) an analysis of the alternatives considered to meet those requirements, including the use of regional centers and other available resources of the Department of Justice.

(2) The Attorney General shall provide that any automatic data processing equipment, facilities, and software of the Immigration and Naturalization Service are acquired consistent with the provisions of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759). No such equipment, facilities, or software may be ordered, acquired, or installed without the prior review and approval of the Administrator of General Services. The Administrator shall notify Congress in writing of all such approvals, together with any limitations or conditions thereon, or modifications thereto.

(3) Effective November 18, 1985, neither the Attorney General nor the Immigration and Naturalization Service may order, acquire, or install any new data processing equipment, facilities, or software for the use of the Service under the existing contract known as Acquisition II until 45 days after the date that Congress receives written notification under paragraph (2) of the approval, by the Administrator of General Services, of the order, acquisition, or installation.

SEC. 112. UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES.

Subsection (a) of section 274 (8 U.S.C. 1324) is amended to read as follows:

"(a) CRIMINAL PENALTIES.—(1) Any person who—

"(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

"(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; or

"(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation,

shall be fined not more than $10,000, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs.

"(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

"(A) be fined not more than $5,000, or imprisoned not more than one year, or both; or

"(B) in the case of—

"(i) a second or subsequent offense,

"(ii) an offense done for the purpose of commercial advantage or private financial gain, or

"(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined not more than $10,000, or imprisoned not more than five years, or both.".

SEC. 113. TREATMENT OF IMMIGRATION EMERGENCIES.

(a) IMMIGRATION CONTINGENCY PLAN.—Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall develop, and may from time to time modify, a contingency plan to provide for the allocation and management of personnel and resources in the event of an immigration emergency. In developing such a plan, the Attorney General shall consult with the Judiciary Committees of the House of Representatives and of the Senate and with State and local governments.".

(b) IMMIGRATION EMERGENCY FUND.—Section 404 (8 U.S.C. 1101 note) is amended by inserting "(a)" after "SEC. 404." and by adding at the end the following new subsection:

"(b) There are authorized to be appropriated to an immigration emergency fund, to be established in the Treasury, $35,000,000, to be used in accordance with the immigration contingency plan developed under section 103(c) to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to

the Judiciary Committees of the House of Representatives and of the Senate.".

Part C—Verification of Status Under Certain Programs

SEC. 121. VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS.

(a) Requiring Immigration Status Verification.—

(1) Under AFDC, medicaid, unemployment compensation, and food stamp programs.—Section 1137 of the Social Security Act (42 U.S.C. 1320b-7) is amended—

(A) in the matter in subsection (a) before paragraph (1), by inserting "which meets the requirements of subsection (d) and" after "income and eligibility verification system",

(B) in subsection (b), by striking out "income verification system" in the matter preceding paragraph (1) and inserting in lieu thereof "income and eligibility verification system", and

(C) by adding at the end the following new subsections:

"(d) The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection—

"(i) in the case of the program described in subsection (b)(1), any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 402(a)(7),

"(ii) in the case of the program described in subsection (b)(4)—

"(I) any reference to the State shall be considered a reference to the State agency, and

"(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

"(III) the term 'satisfactory immigration status' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the State—

"(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

"(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

"(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the State determines, after complying with the requirements of paragraph (4), that such an indi-

vidual is not in a satisfactory immigration status under the applicable program—

"(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

"(e) Each Federal agency responsible for administration of a program described in subsection (b) shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

"(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the State, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the State, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(2) UNDER SSI PROGRAM.—Section 1631(e)(1)(B) of such Act (42 U.S.C. 1383(e)(1)(B)) is amended by striking out "and (c) of such section 1137" and inserting in lieu thereof ", (c), and (d) of such section 1137".

(3) UNDER HOUSING ASSISTANCE PROGRAMS—Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended by adding at the end the following new subsections:

"(d) The following conditions apply with respect to financial assistance being provided for the benefit of an individual:

"(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which

does not make the individual ineligible for financial assistance.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the Secretary—

"(i) shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—

"(i) the Secretary shall transmit to the Immigration and Naturalization Service

photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and

"(iii) the Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the Secretary shall deny or terminate the individual's eligibility for financial assistance, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

In this subsection and subsection (e), the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.

"(e) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity

with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

"(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the entity, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the entity, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(4) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended by adding at the end the following new subsections:

"(c) The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

"(1)(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

"(2) If the student is not a citizen or national of the United States, there must be presented to the institution either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the in-

dividual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the institution—

"(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis

of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status—

"(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

"(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

"(d) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

"(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the institution, under subsection (c)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the institution, under subsection (c)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student, or

"(4) because of a fair hearing process described in subsection (c)(5)(B).".

(b) PROVIDING 100 PERCENT REIMBURSEMENT FOR COSTS OF IMPLEMENTATION AND OPERATION.—

(1) UNDER AFDC PROGRAM.—Section 403(a)(3) of the Social Security Act is amended by inserting before subparagraph (B) the following new subparagraph:

"(A) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d);".

(2) UNDER MEDICAID PROGRAM.—Section 1903(a) of such Act is amended by inserting after paragraph (3) the following new paragraph:

"(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(3) UNDER UNEMPLOYMENT COMPENSATION PROGRAM.—The first sentence of section 302(a) of such Act is amended by inserting before the period at the end the following: ", including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and op-

eration of the immigration status verification system described in section 1137(d)".

(4) UNDER CERTAIN TERRITORIAL ASSISTANCE PROGRAMS.—Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) of the Social Security Act (as in effect without regard to section 301 of the Social Security Amendments of 1972) are each amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

"(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(5) UNDER THE FOOD STAMP PROGRAM.—Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended by adding at the end the following new subsection:

"(h) The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.".

(6) UNDER HOUSING ASSISTANCE PROGRAMS.—The United States Housing Act of 1937 (42 U.S.C.

1437 et seq.) is amended by adding at the end the following new section:

"PAYMENT FOR IMPLEMENTATION OF IMMIGRATION STATUS VERIFICATION SYSTEM

"SEC. 20. The Secretary is authorized to pay to each public housing authority an amount equal to 100 percent of the costs incurred by the authority in implementing and operating the immigration status verification system under section 214(c) of the Housing and Community Development Act of 1980 with respect to financial assistance made available pursuant to this Act.".

(c) EFFECTIVE DATES.—

(1) IMMIGRATION AND NATURALIZATION SERVICE ESTABLISHING VERIFICATION SYSTEM BY OCTOBER 1, 1987.—The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the

sex, color, race, religion, or nationality of the individual involved.

(2) HIGHER MATCHING EFFECTIVE IN FISCAL YEAR 1988.—The amendments made by subsection (b) take effect on October 1, 1987.

(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—The amendments made by subsection (a) take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

(4) FUNDS AUTHORIZED.—Such sums as may be necessary are authorized for the Immigration and Naturalization Service to carry out the purposes of this section.

TITLE II—LEGALIZATION

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM.—Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

"SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

"(1) ENTRY, PHYSICAL PRESENCE, AND TIMELY APPLICATION.—

"(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 18-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

"(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 17 months of the 18-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

"(C) TREATMENT OF CERTAIN CUBAN AND HAITIAN ENTRANTS.—For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 shall be considered to have entered the United

States and to be in an unlawful status in the United States.

"(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

"(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

"(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

"(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

"(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

"(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

"(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.— An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

"(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

"(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

"(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.—

"(1) Adjustment to permanent residence.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

"(A) Timely application after one year's residence.—The alien must apply for such adjustment during the one-year period beginning with the thirteenth month that begins after the date the alien was granted such temporary resident status.

"(B) CONTINUOUS RESIDENCE.—

"(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

"(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

"(D) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—The alien must demonstrate that he either—

"(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a

knowledge and understanding of the history and government of the United States), or

"(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

"(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

"(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for ter-

mination of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(C) at the end of the twenty-fifth month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in the lawful temporary resident status granted under subsection (a)—

"(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual

trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

"(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be filed—

"(A) with the Attorney General, or

"(B) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89–732, or Public Law 95–145.

"(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent

statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraphs (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under

section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

"(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be pro-

vided an 'employment authorized' endorsement or other appropriate work permit.

"(2) During application period.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(f) Administrative and Judicial Review.—

"(1) Administrative and judicial review.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) Administrative review.—

"(A) Single level of administrative appellate review.—The Attorney General shall establish an appellate authority to provide

for a single level of administrative appellate review of such a determination.

"(B) Standard for review.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) Judicial review.—

"(A) Limitation to review of deportation.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

"(B) Standard for judicial review.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(g) Regulations Implementing Section.—The Attorney General, after consultation with the Committees on

the Judiciary of the House of Representatives and of the Senate and with qualified designated entities, shall prescribe—

"(1) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(2) such other regulations as may be necessary to carry out this section.

Such regulations may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

"(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether

through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977; and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

"(2) Exceptions.—Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422, as in effect on April 1, 1983),

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

"(3) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

"(A) The National School Lunch Act.

"(B) The Child Nutrition Act of 1966.

"(C) The Vocational Education Act of 1963.

"(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"(E) The Headstart-Follow Through Act.

"(F) The Job Training Partnership Act.

"(G) Subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965.

"(H) The Public Health Service Act.

"(I) Title V of the Social Security Act.

"(4) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(5) MODIFICATION OF MEDICAID REQUIREMENTS.—The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in this subsection. The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out this subsection.

"(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with designated entities, shall broadly disseminate in English and other appropriate languages information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits. Such information shall include—

"(1) information respecting the requirements that aliens with lawful temporary resident status would have to meet to have their status adjusted to permanent resident status under subsection (b)(1) and the facilities available to provide education and employment training and opportunities in order to meet such requirements;

"(2) information on the conditions under which temporary lawful resident status can be rescinded under subsection (b)(2); and

"(3) information on conditions for employment and foreign travel of aliens with lawful temporary resident status under subsection (b)(3).".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence.".

SEC. 202. CUBAN-HAITIAN ADJUSTMENT.

(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the

Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) NO EFFECT ON FASCELL-STONE BENEFITS.—An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96–422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status affected under this section.

(d) RECORD OF PERMANENT RESIDENCE AS OF JANUARY 1, 1982.—Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act and the Attorney General shall not be required to charge the alien any fee.

(f) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically pro-

vided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

SEC. 203. UPDATING REGISTRY DATE TO JANUARY 1, 1976.

(a) In General.—Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "June 30, 1948" in the heading and inserting in lieu thereof "January 1, 1976", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1976".

(b) Conforming Amendment to Table of Contents.—The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof "January 1, 1976".

(c) CLARIFICATION.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act shall not apply to aliens provided lawful permanent resident status under section 249 of that Act.

SEC. 204. STATE LEGALIZATION ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsections (b) and (c) of this section (including State and local administrative costs) such sums as may be necessary for fiscal year 1987 and for each of the four succeeding fiscal years.

(b) REIMBURSEMENT TO STATES FOR PUBLIC ASSISTANCE FOR ELIGIBLE LEGALIZED ALIENS.—(1) Subject to the amounts provided in advance in appropriation Acts, the Secretary of Health and Human Services shall provide reimbursement to each State (as defined in paragraph (2)(A)) for 100 percent of the costs of programs of public assistance (as defined in paragraph (2)(B)) provided to any eligible legalized alien (as defined in paragraph (2)(C)).

(2) For purposes of this subsection:

(A) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(B) The term "programs of public assistance" means programs existing in a State or local jurisdiction which—

(i) provide for cash, medical, or other assistance designed to meet the basic subsistence or health needs of individuals or required in the interest of public health,

(ii) are generally available to needy individuals residing in the State or locality, and

(iii) receive funding from units of State or local government.

(C) The term "eligible legalized alien" means an alien who was granted lawful temporary resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status.

(c) EDUCATIONAL ASSISTANCE.—Subject to the amounts provided in advance in appropriation Acts and in accordance with this section, the Secretary of Education shall make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens (as defined in subsection (b)(2)(C)), but only to the extent such services are otherwise available to those residing in the State.

(d) CONSULTATION IN IMPLEMENTING SECTION.—The Secretary of Health and Human Services and the Secre-

tary of Education shall consult with representatives of State and local governments in establishing regulations and guidelines to carry out this section.

TITLE III—REF[illegible]M OF LEGAL IMMIGRATION

PART A—[illegible]PORARY AGRICULTURAL WORKERS

SEC. 301. H–2A AGRICULTURAL WORKERS.

(a) PROVIDING NEW "H–2A" NONIMMIGRANT CLASSIFICATION FOR TEMPORARY AGRICULTURAL LABOR.—Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor," in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor".

(b) INVOLVEMENT OF DEPARTMENTS OF LABOR AND AGRICULTURE IN H–2A PROGRAM.—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following: "For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term 'appropriate agencies of Government' means the Department of Labor and includes the Department of Agriculture. The

provisions of section 216 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).".

(c) ADMISSION OF H–2A WORKERS.—(1) Chapter 2 of title II is amended by adding after section 215 the following new section:

"ADMISSION OF TEMPORARY H–2A WORKERS

"SEC. 216. (a) CONDITIONS FOR APPROVAL OF H–2A PETITIONS.—(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

"(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certifica-

tion under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

"(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

"(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

"(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(4) The Secretary determines that the employer has not made positive recruitment efforts within a multistate region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

"(c) SPECIAL RULES FOR CONSIDERATION OF APPLICATIONS.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

"(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H–2A worker.

"(2) NOTICE WITHIN SEVEN DAYS OF DEFICIENCIES.—(A) The employer shall be notified in

writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

"(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

"(3) ISSUANCE OF CERTIFICATION.—(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

"(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

"(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications re-

quired by non-H-2A-employers in the same or comparable occupations and crops.

"(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

"(ii) The requirement of clause (i) shall not apply to any employer who—

"(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)),

"(II) is not a member of an association which has petitioned for certification under this section for its members, and

"(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

"(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Control and Legalization Amendments Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enact-

ment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

"(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: Provided, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

"(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

"(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

"(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

"(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

"(4) HOUSING.—Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accomodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accomodations or other substantially similar class of habitation shall be met: Provided further, That in the absence of applicable local or State standards, Federal

temporary labor camp standards shall apply: Provided further, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: Provided further, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: And provided further, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its

producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secre-

tary determines that the member participated in, had knowledge of, or reason to know of, the violation.

"(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

"(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

"(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

"(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(g) AUTHORIZATIONS OF APPROPRIATIONS.—(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

"(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed

by nonimmigrants described in section 101(a)(15)(H)(ii)(a), and

"(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

"(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(14).

"(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

"(h) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section

101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(i) DEFINITIONS.—For purposes of this section:

"(1) The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(g)) with respect to that employment.

"(2) The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).".

(2) Section 3306(c)(1)(B) of the Internal Revenue Code of 1954 is amended by striking out "before January 1, 1988,".

(d) EFFECTIVE DATE.—The amendments made by this section apply to petitions and applications filed under sections 214(c) and 216 of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 216 of the

Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(f) Sense of Congress Respecting Consultation with Mexico.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 216 of the Immigration and Nationality Act.

(g) Conforming Amendment to Table of Contents.—The table of contents is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Admission of temporary H-2A workers.".

SEC. 302. PERMANENT RESIDENCE FOR CERTAIN SPECIAL AGRICULTURAL WORKERS.

(a) In General.—Chapter 1 of title II is amended by adding at the end the following new section:

"SPECIAL AGRICULTURAL WORKERS

"Sec. 210. (a) Permanent Residence.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the Attorney General determines that the alien meets the following requirements:

"(1) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

"(2) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES.—The alien must establish that he performed seasonal agricultural services in the United States for at least 60 man-days during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

"(3) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

"(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—

"(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(i) with the Attorney General, or

"(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

"(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

"(B) may designate such other persons as the Attorney General determines are qualified and

have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89–732, or Public Law 95–145.

"(3) PROOF OF ELIGIBILITY.—An alien may establish that he meets the requirement of subsection (a)(2) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

"(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this

section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) Penalties for false statements in applications.—

"(A) Criminal penalty.—Whoever—

"(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

"(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(B) Exclusion.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

"(c) Waiver of Numerical Limitations and Certain Grounds for Exclusion.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsection (a)(3)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraph (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges).

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an

alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be pro-

vided an 'employment authorized' endorsement or other appropriate work permit.

"(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review

of an order of exclusion or deportation under section 106.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(f) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

"(g) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term 'seasonal agricultural services' means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Special agricultural workers.".

SEC. 303. DETERMINATIONS OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.

(a) IN GENERAL.—Chapter 1 of title II is amended by adding after section 210 (added by section 302 of this title) the following new section:

"DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

"SEC. 210A. (a) DETERMINATION OF NEED TO ADMIT ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—Before the beginning of each fiscal year (beginning with fiscal year 1990), the Secretaries of Labor and Agriculture (in this section referred to as the 'Secretaries') shall jointly determine the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for permanent residence under this section during the fiscal year to meet a shortage of workers to perform seasonal agricultural services in the United States during the

year. Such number is, in this section, referred to as the 'shortage number'.

"(2) OVERALL DETERMINATION.—The shortage number is—

"(A) the anticipated need for special agricultural workers (as determined under paragraph (3)) for the fiscal year, minus

"(B) the supply of such workers (as determined under paragraph (4)) for that year,

divided by the factor (determined under paragraph (5)) for man-days per worker.

"(3) DETERMINATION OF NEED.—For purposes of paragraph (2)(A), the anticipated need for special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall jointly estimate, using statistically valid methods, the number of man-days of labor performed in seasonal agricultural services in the United States in the previous fiscal year.

"(B) ADJUSTMENT FOR CROP LOSSES AND CHANGES IN INDUSTRY.—The Secretaries shall jointly—

"(i) increase such number by the number of man-days of labor in seasonal ag-

ricultural services in the United States that would have been needed in the previous fiscal year to avoid any crop damage or other loss that resulted from the unavailability of labor, and

"(ii) adjust such number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of—

"(I) growth or contraction in the seasonal agriculture industry, and

"(II) the use of technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

"(4) DETERMINATION OF SUPPLY.—For purposes of paragraph (2)(B), the anticipated supply of special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall use the number estimated under paragraph (3)(A).

"(B) ADJUSTMENT FOR RETIREMENTS AND INCREASED RECRUITMENT.—The Secretaries shall jointly—

"(i) decrease such number by the number of man-days of labor in seasonal agricultural services in the United States that will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

"(ii) increase such number by the number of additional man-days of labor in seasonal agricultural services in the United States that can reasonably be expected to result from the availability of able, willing, qualified, and unemployed special agricultural workers, rural low skill, or manual, laborers, and domestic agricultural workers.

"(C) BASES FOR INCREASED NUMBER.—In making the adjustment under subparagraph (B)(ii), the Secretaries shall consider—

"(i) the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the eco-

nomic competitiveness of the perishable agricultural industry,

"(ii) the effect, if any, of enhanced recruitment efforts by the employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

"(iii) the number of able, willing and qualified individuals who apply for employment opportunities in seasonal agricultural services listed with offices of government employment services.

"(D) CONSTRUCTION.—Nothing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers.

"(5) DETERMINATION OF MAN-DAY PER WORKER FACTOR.—

"(A) FISCAL YEAR 1990.—For fiscal year 1990—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of paragraph (2) the factor under this paragraph is the average number, as determined by the Director of the Bureau

of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1989 by special agricultural workers whose status is adjusted under section 210 and who performed seasonal agricultural services in the United States at any time during the fiscal year.

"(ii) LACK OF ADEQUATE INFORMATION.—If the Director determines that—

"(I) the information reported under subsection (b)(2)(A) is not adequate to make a reasonable determination of the average number described in clause (i), but

"(II) the inadequacy of the information is not due to the refusal or failure of employers to report the information required under subsection (b)(2)(A),

the factor under this paragraph is 80.

"(B) FISCAL YEAR 1991.—For purposes of paragraph (2) for fiscal year 1991, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the

Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1990 by special agricultural workers who obtained lawful permanent resident status under this section.

"(C) FISCAL YEAR 1992 AND THEREAFTER.—For purposes of paragraph (2) for fiscal year 1992 and each fiscal year thereafter, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in each of the two previous fiscal years by special agricultural workers who obtained lawful permanent resident status under this section during either of such fiscal years.

"(6) EMERGENCY PROCEDURE FOR INCREASE IN SHORTAGE NUMBER.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group or association representing employers (and potential employers) of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the fiscal year based upon a show-

ing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant increase in the shortage number due to (i) a significant increase in the need for special agricultural workers in the year, (ii) a significant decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant decrease (below the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

"(B) NOTICE OF EMERGENCY PROCEDURE.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

"(C) PROMPT DETERMINATION ON REQUEST.—The Secretaries, not later than 21 days after the date of the receipt of such a request and after consideration of any information submitted

on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the shortage number for the fiscal year shall be increased, to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described in subparagraph (A) and that such an increase takes into account reasonable recruitment efforts having been undertaken.

"(7) PROCEDURE FOR DECREASING MAN-DAYS OF SEASONAL AGRICULTURAL SERVICES REQUIRED IN THE CASE OF OVER-SUPPLY OF WORKERS.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group of special agricultural workers may request the Secretaries to decrease the number of man-days required under subparagraphs (A) and (B) of subsection (d)(2) with respect to the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number due to (i) a significant decrease in the need for special agricultural workers in the year, (ii) a significant increase in the availability of able, willing, and qualified workers

to perform seasonal agricultural services, or (iii) a significant increase (above the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

"(B) NOTICE OF REQUEST.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

"(C) DETERMINATION ON REQUEST.—The Secretaries, before the end of the fiscal year involved and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the number of man-days specified in subparagraphs (A) and (B) of subsection (d)(2) for the fiscal year shall be reduced by the same proportion as the Secretaries determine that a decrease in the shortage number

is justified based upon the showing and circumstances described in subparagraph (A).

"(b) NUMERICAL LIMITATION ON ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) NUMERICAL LIMITATION.—

"(A) FISCAL YEAR 1990.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1990 is—

"(i) 95 percent of the number of individuals whose status was adjusted under section 210(a), minus

"(ii) the number determined under paragraph (3)(A) for fiscal year 1989 (as adjusted in accordance with subparagraph (D)).

"(B) FISCAL YEARS 1991, 1992, 1993, & 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1991, 1992, 1993, or 1994, is—

"(i) 90 percent of the number described in this clause for the previous fiscal year (or,

for fiscal year 1991, the number described in subparagraph (A)(i)), minus

"(ii) the number determined under paragraph (3)(A) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

"(C) FISCAL YEARS AFTER 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for a fiscal year after fiscal year 1994 is—

"(i) 95 percent of the number described in this clause for the previous fisal year (or, for fiscal year 1995, the number described in subparagraph (B)(i)), minus

"(ii) the number determined under paragraph (3)(A)(i) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

"(D) ADJUSTMENT TO TAKE INTO ACCOUNT CHANGE IN NUMBER OF H-2 AGRICULTURAL WORKERS.—The number used under subparagraph (A)(ii), (B)(ii), or (C)(ii) (as the case may be) shall be increased or decreased to reflect any

numerical increase or decrease, respectively, in the number of aliens admitted to perform temporary seasonal agricultural services (as defined in subsection (f)(2)) under section 101(a)(15)(H)(ii)(a) in the fiscal year compared to such number in the previous fiscal year.

"(2) Reporting of information on employment.—In the case of a person or entity who employs, during a fiscal year in seasonal agricultural services, a special agricultural worker—

"(A) whose status was adjusted under section 210, the person or entity shall furnish the Director of the Bureau of the Census with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year, or

"(B) who was admitted or whose status was adjusted under this section, the person or entity shall furnish the alien and the Director with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year.

"(3) ANNUAL DETERMINATION OF EMPLOYMENT OF SPECIAL AGRICULTURAL WORKERS.—

"(A) IN GENERAL.—The Director of the Bureau of the Census shall, before the end of each fiscal year (beginning with fiscal year 1989), determine—

"(i) the number of special agricultural workers who have performed seasonal agricultural services in the United States at any time during the fiscal year, and

"(ii) for purposes of subsection (a)(5), the average number of man-days of such services certain of such workers have performed in the United States during the fiscal year.

"(B) BASIS FOR DETERMINATIONS.—Subject to subparagraph (C), such determinations shall be based on the certifications furnished to the Director under paragraph (2).

"(C) ADJUSTMENT FOR UNDERREPORTING AND DUPLICATE REPORTING.—The Director shall adjust the number otherwise determined so as to take into account the underreporting or duplicate reporting of special agricultural workers who have performed seasonal agricultural services

at any time during the fiscal year. The Director shall periodically conduct appropriate surveys, of agricultural employers and others, to ascertain the extent of such underreporting or duplicate reporting.

"(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—Notwithstanding the numerical limitations under section 201 or the provisions of sections 202, 203, or 204, the number of aliens who may be issued visas or who otherwise may acquire the status of an alien lawfully admitted for permanent residence under this section in a fiscal year is equal to the shortage number (determined under subsection (a)) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year.

"(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for permanent residence under this subsection. Such process shall provide special consideration for aliens who have been continuously residing in the United States since May 1, 1986. No alien may be issued a visa as an

alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

"(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for permanent residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)).

"(2) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUIRED.—

"(A) FOR 2 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for permanent residence under this section, must establish to the Attorney General that the alien has performed 60 man-days of seasonal agricultural services—

"(i) during the one-year period beginning on the date the alien obtained such status, and

"(ii) during the one-year period beginning one year after the date the alien obtained such status.

"(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 60 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

"(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

"(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(7).

"(e) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

"(1) EQUAL TRANSPORTATION FOR DOMESTIC WORKERS.—If a person employs an alien, who was admitted or whose status is adjusted under subsection

(c), in the performance of seasonal agricultural services and provides transportation arrangements or assistance for such workers, the employer must provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed in the performance of seasonal agricultural services.

"(2) PROHIBITION OF FALSE INFORMATION BY CERTAIN EMPLOYERS.—A farm labor contractor, agricultural employer, or agricultural association who is an exempt person (as defined in paragraph (5)) shall not knowingly provide false or misleading information to an alien who was admitted or whose status was adjusted under subsection (c) concerning the terms, conditions, or existence of agricultural employment (described in subsection (a), (b), or (c) of section 301 of MASAWPA).

"(3) PROHIBITION OF DISCRIMINATION BY CERTAIN EMPLOYERS.—In the case of an exempt person and with respect to aliens who have been admitted or whose status has been adjusted under subsection (c), the provisions of section 505 of MASAWPA shall apply to any proceeding under or related to (and rights and protections afforded by) this section in the same manner as they apply to proceedings under or

related to (and rights and protections afforded by) MASAWPA.

"(4) ENFORCEMENT.—If a person or entity—

"(A) fails to furnish a certificate required under subsection (b)(2) or furnishes false statement of a material fact in such a certificate,

"(B) violates paragraph (1) or (2), or

"(C) violates the provisions of section 505(a) of MASAWPA (as they apply under paragraph (3)),

the person or entity is subject to a civil money penalty under section 503 of MASAWPA in the same manner as if the person or entity had committed a violation of MASAWPA.

"(5) SPECIAL DEFINITIONS.—In this subsection:

"(A) MASAWPA.—The term 'MASAWPA' means the Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97–470).

"(B) The term 'exempt person' means a person or entity who would be subject to the provisions of MASAWPA but for paragraph (1) or (2), or both, of section 4(a) of MASAWPA.

"(f) GENERAL DEFINITIONS.—In this section:

"(1) The term 'special agricultural worker' means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

"(2) The term 'seasonal agricultural services' has the meaning given such term in section 210(g).

"(3) The term 'Director' refers to the Director of the Bureau of the Census.".

(b) DEPORTATION OF CERTAIN WORKERS WHO FAIL TO PERFORM SEASONAL AGRICULTURAL SERVICES.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out "or" at the end of paragraph (18),

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or", and

(3) by adding at the end the following new paragraph:

"(20) obtains the status of an alien who becomes lawfully admitted for permanent residence under section 210A and fails to meet the requirement of section 210A(d)(3)(A) by the end of the applicable period.".

(c) APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS.—For purposes of section 204 of this Act (relating to State legalization assistance), the term "eligible

legalized alien" includes an alien who becomes an alien lawfully admitted for permanent residence under section 210 or 210A of the Immigration and Nationality Act, but only until the end of the 5-year period beginning on the date the alien was first granted permanent resident status.

(d) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 210 (as inserted by section 302) the following new item:

"Sec. 210A. Determination of agricultural labor shortages and admission of additional special agricultural workers.".

SEC. 304. COMMISSION ON AGRICULTURAL WORKERS.

(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission on Agricultural Workers (hereinafter in this section referred to as the "Commission"), to be composed of 12 members—

(A) six to be appointed by the President,

(B) three to be appointed by the Speaker of the House of Representatives, and

(C) three to be appointed by the President pro tempore of the Senate.

(2) In making appointments under paragraph (1)(A), the President shall consult—

(A) with the Attorney General in appointing two members,

(B) with the Secretary of Labor in appointing two members, and

(C) with the Secretary of Agriculture in appointing two members.

(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(4) Members shall be appointed to serve for the life of the Commission.

(b) FUNCTIONS OF COMMISSION.—(1) The Commission shall review the following:

(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

(B) The extent to which aliens who have obtained lawful permanent resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section 210A of the Immigration and Nationality Act perform 60 man-days of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

(D) The extent to which the agricultural industry relies on the employment of a temporary workforce.

(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act.

(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

(2) The Commission shall conduct an overall evaluation of the special agricultural worker provisions, including the

process for determining whether or not an agricultural labor shortage exists.

(c) Report to Congress.—The Commission shall report to the Congress not later than five years after the date of the enactment of this Act on its reviews under subsection (b). The Commission shall include in its report recommendations for appropriate changes that should be made in the special agricultural worker provisions.

(d) Compensation of Members.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(e) Meetings of Commission.—(1) Five members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

(3) The Commission shall meet at the call of the Chairman or a majority of its members.

(f) STAFF.—(1) The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS-18 of the General Schedule.

(g) AUTHORITY OF COMMISSION.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

(i) TERMINATION DATE.—The Commission shall cease to exist at the end of the 63-month period beginning with the month after the month in which this Act is enacted.

(j) DEFINITIONS.—In this section:

(1) The term "employer sanctions" means the provisions of section 274A of the Immigration and Nationality Act.

(2) The term "legalization program" refers to the provisions of section 245A of the Immigration and Nationality Act.

(3) The term "seasonal agricultural services" has the meaning given such term in section 210(g) of the Immigration and Nationality Act.

(4) The term "special agricultural worker provisions" refers to sections 210 and 210A of the Immigration and Nationality Act.

SEC. 305. ELIGIBILITY OF CERTAIN AGRICULTURAL WORKERS FOR LEGAL ASSISTANCE.

A nonimmigrant worker admitted to or permitted to remain in the United States for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.).

Part B—Other Changes in the Immigration Law

SEC. 311. CHANGE IN COLONIAL QUOTA.

(a) Increase to 5,000.—(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "5,000".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "5,000".

(b) Effective Date.—The amendments made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

SEC. 312. STUDENTS.

(a) Requiring Two-Year Foreign Residence for Most Foreign Students.—Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by striking out "(e) No person" and inserting in lieu thereof "(e)(1) No person (A)",

(2) by inserting after "training," the following: "or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,",

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (A)(iii) or clause (B) of the first sentence",

(4) by striking out ": Provided, That upon" and inserting in lieu thereof ". Upon",

(5) by striking out ": And provided further, That except" and inserting in lieu thereof ". Except", and

(6) by designating the second and third sentences (as so amended) as paragraphs (2) and (3), respectively,

(7) by adding at the end the following new paragraphs:

"(4) The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of paragraph (1) who is an immediate relative (as specified in section 201(b)).

"(5) The Attorney General, in the case of an alien described in clause (B) of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive such two-year foreign residence requirement if the Attorney General determines that the waiver is in the public interest and that the alien—

"(A) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a) and meets the requirements of paragraph (6), or

"(B) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii) and meets the requirements of paragraph (7).

"(6) An alien meets the requirements of this paragraph if the alien—

"(A) is admitted to the United States under section 101(a)(15)(F) before October 1, 1992, and

"(B) has obtained—

"(i) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

"(ii) a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research, business, or technical position by a employer in the field in which he obtained the degree, or

"(iii) an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered a research, business, or technical position by a United States employer which requires such exceptional ability,

and has received a certification under section 212(a)(14) with respect to the position.

"(7) An alien meets the requirements of this paragraph if the alien—

"(A) has obtained a degree in a natural science, mathematics, computer science, or an engineering or business field;

"(B) will receive no more than four years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof; and

"(C) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the training program in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the training program.".

(b) PROHIBITING ADJUSTMENT OF STATUS OF MOST STUDENT ENTRANTS.—Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e)(1)) who en-

tered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15)".

(c) NOT COUNTING PERIOD OF PRESENCE FOR SUSPENSION OF DEPORTATION.—Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)", and

(2) by adding at the end the following new paragraph:

"(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be included any period in which the alien was in the United States as—

"(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

"(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(5)(B).".

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) apply to aliens admitted to the United States as a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act after the date of the enactment of this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

SEC. 313. G-IV SPECIAL IMMIGRANTS.

(a) SPECIAL IMMIGRANT STATUS FOR CERTAIN OFFICERS AND EMPLOYEES OF INTERNATIONAL ORGANIZATIONS AND THEIR IMMEDIATE FAMILY MEMBERS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for

periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who

(I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer's or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) NONIMMIGRANT STATUS FOR CERTAIN PARENTS AND CHILDREN OF ALIENS GIVEN SPECIAL IMMIGRANT STATUS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I).".

SEC. 314. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

(a) ESTABLISHING VISA WAIVER PILOT PROGRAM.—Chapter 2 of title II, as amended by section 301(c), is further amended by adding after section 216 the following new section:

"VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

"SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the 'pilot program') under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

"(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

"(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

"(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(B) is designated as a pilot program country under subsection (c).

"(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

"(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

"(B) executes a waiver of review and appeal described in subsection (b)(4).

"(4) ROUND-TRIP TICKET.—The alien has a round-trip, nontransferable transportation ticket which—

"(A) is valid for a period of not less than one year,

"(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

"(C) is issued by a carrier which has entered into an agreement described in subsection (d), and

"(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

"(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

"(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

"(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

"(1) PRIOR NOTICE TO CONGRESS.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

"(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—The Attorney General in cooperation with the Secretary of State shall develop and establish

an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

"(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

"(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

"(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

"(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

"(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

"(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

"(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) Low nonimmigrant visa refusal rate for each of 2 previous years.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(3) Continuing and subsequent qualifications.—For each fiscal year (within the pilot program period) after the initial period—

"(A) Continuing qualification.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

"(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal

year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

"(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per-

cent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term 'initial period' means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

"(d) CARRIER AGREEMENTS.—

"(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(C) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

"(B) to submit daily to immigration officers any immigration forms received with respect to

nonimmigrant visitors provided a waiver under the pilot program.

"(2) Termination of agreements.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(e) Definition of Pilot Program Period.—For purposes of this section, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.".

(b) Limitation on Stay in United States.—Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

(c) Prohibition of Adjustment to Immigrant Status.—Section 245(c) (8 U.S.C. 1255(c)), as amended by section 312(b), is further amended by striking out "or" before "(4)" and by inserting before the period at the end the following: "; or (5) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a

nonimmigrant visitor without a visa under section 212(l) or section 217".

(d) PROHIBITION OF ADJUSTMENT OF NONIMMIGRANT STATUS.—Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.".

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by adding after the item relating to section 216 the following new item:

"Sec. 217. Visa waiver pilot program for certain visitors.".

SEC. 315. MISCELLANEOUS PROVISIONS.

(a) EQUAL TREATMENT OF FATHERS.—Section 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)) is amended by inserting "or to its natural father if the father has or had a bona fide parent-child relationship with the person" after "natural mother".

(b) SUSPENSION OF DEPORTATION FOR CERTAIN ALIENS.—Section 244(b) (8 U.S.C. 1254(b)), as amended by section 312(c), is further amended by adding at the end the following new paragraph:

"(3) An alien shall not be considered to have failed to maintain continuous physical presence in the United States

under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.".

TITLE IV—REPORTS TO CONGRESS

SEC. 401. TRIENNIAL REPORTS CONCERNING IMMIGRATION.

(a) IN GENERAL.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives, not later than three years after the date of the enactment of this Act, and every three years thereafter, a comprehensive report on the general legal admissions under the Immigration and Nationality Act.

(b) CONTENTS.—Each report shall include—

(1) the number and classifications of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preference classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241 of the Immigration and Nationality Act; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and pa-

rolees into the United States during the period on the economy, labor and housing markets, educational system, social services, foreign policy, environmental quality and resources, and population growth rate of the United States.

(c) DATA.—The information (referred to in subsection (b)) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) RECOMMENDATIONS.—The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act bearing on the admission and entry of aliens into the United States.

SEC. 402. REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT AND DISCRIMINATION IN EMPLOYMENT.

(a) PRESIDENTIAL REPORTS.—(1) The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens) in accordance with this subsection.

(2) Every six months, beginning six months after the date of the enactment of this Act, the President shall transmit a report which shall include—

(A) an analysis of the adequacy of the employment verification system set forth in subsection (b) of section 274A of the Immigration and Nationality Act; and

(B) an analysis of the impact of that section on—

(i) the employment, wages, and working conditions of United States workers,

(ii) the number of aliens entering the United States illegally, and

(iii) the violation of terms and conditions of nonimmigrant visas by foreign visitors.

(3)(A) By each of the dates specified in subparagraph (B), the President shall transmit a report which shall include a description of the impact of section 274A of the Immigration and Nationality Act on—

(i) discrimination against citizen and permanent resident alien members of minority groups, and

(ii) the paperwork and recordkeeping burden on United States employers.

(B) The dates referred to in subparagraph (A) are 18, 36, and 54 months after the date of enactment of this Act.

(b) Civil Rights Commission Monitoring and Reports.—(1) The Civil Rights Commission shall monitor the implementation and enforcement of the provisions of section 274A of the Immigration and Nationality Act and shall investigate allegations that the enforcement or implementation of that section has been conducted in a manner that results in unlawful discrimination by race or national origin against citizens of the United States or aliens who are not unauthorized aliens (as defined for purposes of that section).

(2) The Civil Rights Commission, not later than 18 months after the month in which this Act is enacted, shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing the implementation and enforcement of the provisions of that section during the preceding period, for the purpose of determining if a pattern of such unlawful discrimination has resulted. Two more such reports shall be prepared and transmitted 36 and 54 months after the month in which this Act is enacted.

SEC. 403. REPORTS ON H-2A PROGRAM.

(a) Presidential Reports.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H–2A) program, which shall include—

(1) the number of foreign workers permitted to be employed under the program in each year;

(2) the compliance of employers and foreign workers with the terms and conditions of the program;

(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

(4) recommendations for modifications of the program, including—

(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification

under the program, to continue to accept qualified United States workers for employment after the date the H–2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H–2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) DEADLINES.—A report on the H–2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act, and every two years thereafter.

SEC. 404. REPORTS ON LEGALIZATION PROGRAM.

(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act.

(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 12 months after the end of the application period for adjustment to lawful temporary residence status under the

program, shall include a description of the population whose status is legalized under the program, including—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics, and

(3) a general profile and characteristics.

(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

(2) the patterns of employment of the legalized population, and

(3) the participation of legalized aliens in social service programs.

SEC. 405. REPORT ON VISA WAIVER PILOT PROGRAM.

(a) MONITORING AND REPORT PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act and shall report to the Congress not later than two years after the beginning of the program.

(b) DETAILS IN REPORT.—The report shall include—

(1) an evaluation of the program, including its impact—

(A) on the control of alien visitors to the United States,

(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

(C) on the United States tourism industry; and

(2) recommendations—

(A) on extending the pilot program period, and

(B) on increasing the number of countries that may be designated under the program.

SEC. 406. REPORT ON INS RESOURCES.

Not later than 90 days after the date of the enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report describing the type of equipment and personnel resources required to improve the capabilities of the Immigration and Naturalization Service so that it can adequately carry out services and enforcement activities, includ-

ing those required to carry out the amendments made by this Act.

TITLE V—STATE AND LOCAL ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

SEC. 501. REIMBURSEMENT OF STATES AND LOCALITIES FOR COSTS OF INCARCERATING ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS.

(a) REIMBURSEMENT TO STATES AND LOCALITIES.—The Attorney General shall reimburse States and local jurisidictions within a State for the costs incurred by the State or local jurisdiction—

(1) for the imprisonment of any illegal alien or Cuban national, described in subsection (b) or (c), respectively, who is convicted of a felony by the State or local jurisdiction, and

(2) for the pre-trial and post-trial detention of any illegal alien or Cuban national, described in subsection (b) or (c), respectively, who is convicted in the trial of a felony by the State or local jurisdiction.

(b) ILLEGAL ALIEN.—An illegal alien described in this subsection is any alien who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) CUBAN NATIONAL.—A Cuban national described in this subsection is an alien who is a national of Cuba and who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of Appropriation.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) Effective Date.—This section shall become effective on October 1, 1986.

(f) State Defined.—The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

CHAIRMAN HENRY B. GONZALEZ
OPENING STATEMENT
IMPACT OF THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM HEARING

WEDNESDAY, AUGUST 6, 1986

THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS, SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT AND THE SELECT COMMITTEE ON AGING, CHAIRED BY CONGRESSMAN ROYBAL, HAVE JOINED TODAY IN THIS HEARING TO ASSESS THE IMPACT OF THE APPLICATION OF THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM ON FEDERALLY ASSISTED HOUSING PROGRAMS AS REQUIRED BY H. R. 3810, THE IMMIGRATION AND LEGALIZATION AMENDMENTS OF 1986, RECENTLY REPORTED BY THE HOUSE JUDICIARY COMMITTEE.

THE BANKING COMMITTEE HAS RECEIVED SEQUENTIAL REFERRAL OVER THE PROVISION OF H. R. 3810, THE IMMIGRATION BILL, RELATING TO FEDERALLY ASSISTED HOUSING PROGRAMS. SINCE THE DEADLINE FOR RESPONDING TO THE SEQUENTIAL REFERRAL WAS AUGUST 5TH, YESTERDAY THE COMMITTEE FORWARDED RECOMMENDED CHANGES TO THE JUDICIARY COMMITTEE, WHICH WOULD CONFORM THE PROVISIONS OF H. R. 3810 TO A RECENTLY HOUSE-PASSED ROYBAL-DORNAN AMENDMENT TO H. R. 1, THE HOUSING ACT OF 1986. THAT AMENDMENT WOULD PROVIDE THAT FAMILIES WHICH HAVE AT LEAST ONE CITIZEN OR LEGAL ALIEN IN THE HOUSEHOLD WOULD BE ALLOWED TO APPLY FOR OR REMAIN IN ASSISTED HOUSING AND ELDERLY PERSONS, AGED 62 YEARS OR OLDER, WOULD ONLY HAVE TO CERTIFY THEIR CITIZENSHIP STATUS. THE AMENDMENT IS INTENDED TO BLOCK THE IMPLEMENTATION OF HUD FINAL REGULATIONS DUE TO GO INTO EFFECT ON SEPTEMBER 30, 1986, WHICH WOULD SEVERELY LIMIT ASSISTANCE TO FAMILIES CONTAINING ALIENS AND WOULD CAUSE THE DISPLACEMENT OF THOUSANDS OF CURRENTLY ASSISTED FAMILIES AND ELDERLY PERSONS EVEN WHEN THOSE FAMILIES CONTAINED ELIGIBLE FAMILY MEMBERS.

A NUMBER OF ISSUES HAVE BEEN RAISED BY THE REQUIREMENT CONTAINED IN H. R. 3810 THAT THE IMMIGRATION STATUS OF EACH ALIEN BE VERIFIED WITH I.N.S. AND THE PLANS OF I.N.S. TO EXPAND ITS COMPUTERIZED S.A.V.E. SYSTEM. ARE INDIVIDUAL PRIVACY RIGHTS ENDANGERED BY THE EXPANSION OF A NATIONAL COMPUTER SYSTEM? WHAT BURDEN WILL BE PLACED ON THE ADMINISTRATION OF PRIVATELY-OWNED BUT FEDERALLY-SUBSIDIZED HOUSING PROJECTS SUCH AS 202 ELDERLY PROJECTS IF EVERY ALIEN MUST BE VERIFIED? IS IT REASONABLE TO PROVIDE HUD WITH SOME FLEXIBILITY IN DETERMINING WHETHER THERE IS A COST-EFFECTIVE ALTERNATIVE TO THE I.N.S.-S.A.V.E. PROGRAM FOR VERIFICATION PURPOSES?

I AM HOPEFUL THAT THIS HEARING WILL PROVIDE ANSWERS TO THESE AND OTHER ISSUES AND THAT AS A RESULT WE WILL BE ABLE TO MAKE FURTHER RECOMMENDATIONS REGARDING NECESSARY IMPROVEMENTS TO H. R. 3810.

JV;EH-Cdr.-speeches
"savehear"

Mr. TORRES. Thank you, Mr. Chairman.

I want to thank you and Congressman Roybal for conducting this hearing today. It is a very important hearing to all of us. I also want to thank all the witnesses for taking time out from their busy schedules to be with us. We know that Congress has grappled with immigration reform for the past 6 years. I have been here at least 4 of those years, and during that time countless hearings have been held and virtually every immigration issue has been extensively debated.

But today's hearing will examine a new and largely untested program that will affect millions of people throughout this country. The Judiciary Committee has reported a bill, H.R. 3810, which would mandate the nationwide implementation of an alien verification program known as SAVE, S-A-V-E by its acronym.

Mr. Chairman, I have serious problems with that program, I am told that it is needed because thousands of illegal immigrants are using scarce Federal benefits to the detriment of American citizens and legal immigrants. I am told that this program will save the Federal Government billions of dollars. I am also told that SAVE is fair to those undergoing verification and cost-effective to administer.

Yet what do we really know about SAVE? Have congressional hearings been held to determine the impact of the program? Are in-depth analysis of SAVE operations available for congressional review? Unfortunately, the answers to those questions is no.

I would like to continue with my statement, but in lieu of the time, and the fact that our cochairman has arrived, I would like to ask that my statement be entered into the record. Let me just say that I echo your concerns about what happens to the many hundreds of people that have been in this country.

My father-in-law who came into the United States in 1900, was carried by his mother across the border. His mother signed in the book, he couldn't sign, he was a year old or less than a year. Because of these circumstances he would not be able to prove today any kind of verification. This is the concern that we have with hundreds of people who will be caught up in the dragnet this program calls for.

I yield the balance of my time, Mr. Chairman.

Chairman GONZALEZ. Thank you very much.

What we can do, Mr. Torres, is include your complete introductory remarks in the record as you prepared them.

Also I ask unanimous consent that I may be allowed to place in the record at this point a statement sent to us by our distinguished colleague, Mr. Robert Garcia of New York. He couldn't be here. He wanted to introduce the distinguished chairman of the Housing Authority of New York, Mr. Popolizio, who is here and will be heard later.

[The prepared statement of Mr. Garcia can be found in the appendix.]

Chairman GONZALEZ. Also, I ask unanimous consent that immediately following Mr. Torres' remarks that we place into the record a brief summary of the SAVE Program prepared by the Housing Subcommittee staff and an executive summary of the SAVE Program submitted by INS Commissioner Nelson, who was invited to this hearing but will not be able to be with us today.

[The prepared statement of Mr. Torres and staff and executive summaries referred to can be found in the appendix.]

Chairman GONZALEZ. Also, I am happy to recognize Mr. McKinney, the ranking minority member of the subcommittee and the full committee.

Mr. MCKINNEY. Mr. Chairman, thank you.

I have no opening statement. I am simply looking forward to hearing the testimony on what has certainly become a big problem in the Northeast.

Chairman GONZALEZ. Well, thank you, Mr. McKinney.

We have Mr. George Wortley, who has also been very active and a very valuable member of the subcommittee since he came to the Congress. Mr. Wortley.

Mr. WORTLEY. Thank you, Mr. Chairman.

I want to commend you and Chairman Roybal for holding this hearing today. As a member of the Aging Committee Subcommittee on Housing and Consumers Interests and the Banking Subcommittee on Housing and Community Development, this hearing is of special interest to me.

My home district of Syracuse, NY, there are a number of 202 housing units. It is with this in mind that I look forward to hearing today's testimony.

While we want to be sure that the system isn't being taken advantage of, and I am also especially concerned about those senior citizens who may not be able to readily prove their citizenship status. The last thing I want to see is a senior citizen being displaced when it is not absolutely necessary.

I am aware the Roybal-Dornan amendment to H.R. 1 should help alleviate this anticipated problem. I am interested in seeing how this amendment and the SAVE Program will interface with the requirements contained in H.R. 3810 for alien verification and expansion of the SAVE system.

The testimony from Stephen May, Assistant Secretary of HUD, should be especially helpful today.

Thank you, Mr. Chairman.

Chairman GONZALEZ. Thank you, Mr. Wortley.

I recognize Mr. Saxton for a statement or any remarks.

Mr. SAXTON. I have no statement, Mr. Chairman.

Chairman GONZALEZ. We are privileged to have Mrs. Bentley, and we recognize you at this time for any statement you may wish to make.

Mrs. BENTLEY. Thank you, Mr. Chairman.

I have no statement other than to say that I think this is an important hearing and I think that we do need to make sure that our citizens and the legal aliens are protected.

Chairman GONZALEZ. Thank you very much.

I don't believe Mr. Roybal has been able to get over here—well, excuse me. Here he is. I am sorry. I apologize, I should have recognized you right following Mr. Torres' statement.

Mr. ROYBAL. Mr. Chairman, I think——

Chairman GONZALEZ. You ought to have as high a chair as I.

Mr. ROYBAL. You should always know that I am behind you.

Chairman **Gonzalez**. Well, I have seniority.

Mr. **Roybal**. I would like to take this opportunity to commend you for your leadership in calling for this joint hearing to assess the impact of the SAVE Program on families and senior citizens. Before we commit ourselves to mandatory implementation of this massive system nationwide, it is critical that we examine a number of key problems and issues. These issues have arisen from analyses of the pilot programs.

For instance, I am greatly concerned by reports from the General Accounting Office and other sources which indicate there are substantial flaws in the Immigration's automated file system. Serious problems such as missing or incorrect data in as much as 30 percent of the system, threaten vast numbers of innocent individuals and families with unjust displacement from their homes.

Nearly half of all the residents of HUD-assisted housing are elderly and this is of great concern, not only to me but to a vast majority of people throughout the United States.

I am also very disappointed that the Immigration and Naturalization Service declined our invitation to send a representative to today's important joint hearing. These are very serious issues we are examining, and have critical nationwide implications for thousands of low income senior citizens and families.

Without the participation of the INS large gaps in information will unnecessarily remain and many key questions will go unanswered.

It is true, however, that we will have very important witnesses, distinguished witnesses representing a wide cross-section of the country. I look forward to hearing their expert testimony and to receiving their recommendations. However, Mr. Chairman, I must again say that I am very disappointed that the Immigration Service is not present to hear what these experts have to say because I think that the Immigration Service needs this information more than anyone else, more than any member of your committee or mine or any Member of Congress.

Still they are not present. Although we asked them, they chose not to be here. We will do the very best we can in sending to them the information that we receive, hoping that some positive action is taken with regard to their automated system, SAVE, and their records in general.

These are the things that worry me more than anything else. I was hoping their presence today would help start the dialog between Congress and the INS so that some changes could be made in their particular system with information that comes from those experts that really know what the score is.

I thank you, Mr. Chairman, for this opportunity.

Chairman **Gonzalez**. Well, thank you, Chairman Roybal.

Let me say it is my hope that you and I together, and both the select committee and the subcommittee can continue on a continuing and sustained basis to bring forth some overview on implementation. We can also bring in the INS and provide adequate anticipatory notice so that they will not be hard pressed with a quick notice or allegations that they were given very short notice.

If you think that is acceptable, I think we can look forward to that and make sure that at our next joint hearing we can bring in the INS. I agree with you 100 percent, it is indispensable that we communicate and they communicate with the Members of Congress and with those persons that are represented here today plus others.

We have as our lead-off witness, Mr. Stephen May, who is the Assistant Secretary of HUD for Legislation and Congressional Relations.

He is a very skilled diplomat, as this job requires, any time HUD maintains congressional relations. As you know, that is a very, very sensitive position. Mr. May, I believe, has discharged it with great honor and ability.

Mr. May.

STATEMENT OF STEPHEN MAY, ASSISTANT SECRETARY FOR OFFICE OF LEGISLATION AND CONGRESSIONAL RELATIONS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. **MAY**. Well, Messrs. Chairmen and members of the committee, I am pleased to respond in these somewhat unfamiliar surroundings to your invitation to testify on behalf of the Department of Housing and Urban Development at this joint hearing on the impact of a systematic alien verification system on HUD-assisted housing programs.

May I make clear at the outset that HUD supports the major objective of section 121 of H.R. 3810 as reported by the House Judiciary Committee, namely, the use of INS computer and manual systems to verify eligibility for assistance under HUD-assisted housing programs.

Provisions with the same general objective are, as you know, included in the administration's proposed amendments to implement a Systematic Alien Verification for Entitlements, or [SAVE], system. These provisions were submitted by the Department of Justice to the Judiciary Committee on June 10 of this year, and also have been shared with members of the Banking Committee staff more recently than that.

We believe for the reasons which I will discuss in my testimony, that the administration's SAVE amendment is preferable to the SAVE Program currently contained in H.R. 3810.

By way of background, let me briefly summarize the history of alien restrictions with regard to housing programs. It had been the historical position of the Department that alien status could not be made a condition for eligibility in these programs by the Department, and that such restrictions could only be authorized by the Congress.

As the members of this committee know, in 1981 Congress enacted a statute which prohibits HUD from providing financial assistance to aliens not admitted as lawful, permanent residents of the United States. This restriction applies to assistance for tenants in the form of rent supplement payments, section 236 interest reduction payments or rental assistance payments, section 8 housing assistance payments and public housing. The prohibition also applies to assistance to homeowners through section 235 assistance payments.

The statute was modeled on similar statutory restrictions applicable to the Food Stamp Program. The purpose of the restrictions—

and I underscore this—as stated in the conference report, is to "reserve scarce housing assistance resources for persons with the most legitimate claim—namely, citizens and other persons lawfully present in the United States"

This statement of the purpose of the enactment points up a significant difference between housing assistance programs and entitlement programs such as food stamps. In entitlement programs, receipt of benefits by illegal aliens does not reduce the amount of benefits available to citizens and documented aliens. In housing programs, where the total amount of assistance available is limited, the receipt of benefits by an illegal alien serves to deny the receipt of benefits by a citizen or other person lawfully present in the United States.

As members of these committees well know, HUD has issued a regulation to enforce the statutory prohibition mandated by Congress. In designing a system to carry out the statute, HUD has sought to accomplish these goals:

One, that the system be comprehensive and effective.

Two, that the system be simply and fairly administered.

And three, that the alien restrictions be implemented with maximum uniformity and objectivity.

We believe these objectives are fully reflected in the regulations recently issued by the Department. As previously mentioned, these regulations implement a specific statutory mandate—to save limited housing assistance resources for citizens and eligible aliens.

As requested by Chairman Gonzalez and other Members of Congress, the Department has deferred the effective date of the final rule from July 30 to September 30, 1986. This should provide ample time for Congress to address this issue, or for it to become clear that no amendments will be forthcoming.

The Department believes that use of the INS computerized SAVE system proposed in H.R. 3810 can be a central tool for verification of alien status with regard to HUD-assisted housing programs.

To understand the mechanics of alien status verification in HUD housing program, I think it is important to recognize first of all that eligibility is determined by many local program administrators. In the Public Housing Program and Section 8 Certificate and Voucher Programs, for example, eligibility is determined by a public housing agency. In project-based rental subsidy programs, such as section 8 New Construction and section 236, the project owner selects the tenants and must determine that the tenant family has satisfied Federal eligibility requirements. In the Section 235 Homeownership Program, eligibility is determined by the lender.

HUD does not expect that all of these public housing agencies, and owners and lenders, are or should become experts in Federal immigration law. That is, of course, the responsibility and expertise of Federal immigration authorities.

For practical administration of HUD's new alien eligibility requirements, each adult family member is required to document citizenship or eligible alien status. The documents that can be used to show that a person is a citizen of the United States or is an eligible alien are clearly and precisely listed in HUD's instructions.

They include birth or naturalization certificates for citizens and green cards or other INS documents for eligible aliens. The question for the program administrator is simple and straightforward: whether the family has or has not presented the required document.

The key to enforcement of statutory eligibility requirements is assurance that the document presented by a family is what it looks like: that the document is valid evidence of eligible status. Presentation of bogus alien documents is a major threat to the integrity of a system that relies on the submission of documents to show eligibility for assistance.

Now, both Messrs. Chairmen, because HUD has had no experience in working with the INS SAVE system, it is difficult to be definitive about its potential impact on HUD-assisted housing programs. It appears that the INS computerized system offers a quick and efficient means to verify alien status. We understand from the INS that the SAVE network can be accessed directly by remote computer terminals or by furnishing alien registration numbers to INS for verification from the SAVE data bank.

For parties with direct access to the SAVE system, the alien registration number is keyed in by computer terminal. If the number if valid, we are told that computerized verification can be provided in a matter of seconds.

I just underscore there is such a variety of HUD housing programs that the ways and means by which we might utilize the SAVE system would have to be determined at a future date after considerable further study.

The use of computerized SAVE data for HUD programs should be coupled with the opportunity for a manual check. If there is a discrepancy between the SAVE data and other data provided to the program administrator, INS would be asked to verify, by INS manual record checks, whether the individual is a lawful, permanent resident of the United States.

The administration's proposed amendment to implement the SAVE system provides that if HUD is advised by INS that an individual is in an immigration status that would render the individual ineligible for financial assistance, HUD will afford the individual the opportunity to prove otherwise. Assistance for the family may not be denied or terminated until the family has been given this opportunity.

In any case, it is important to note that the SAVE system imposes no new or additional burden on applicant and participant families, or upon elderly members of the family.

Messrs. Chairmen, your invitation to testify requests HUD's assessment of the advisability of affording a Federal agency permission to waive mandatory alien status verification through the INS SAVE system in certain circumstances. The Department does believe that HUD and other Federal agencies should have administrative discretion to forego use of the SAVE system when there is an alternative and equally effective and timely system for alien verification, or when the SAVE system is not cost effective. For this purpose, HUD supports enactment of the language contained in the administration's proposed amendment.

Although HUD supports the major aims of the alien verification requirements of section 121 of H.R. 3810 as reported by the House Judiciary Committee, the language of the bill in some specific instances raises several significant technical and substantive concerns, some of which have been discussed with your staff. We would, therefore, strongly recommend that the Congress consider the alternative language in the administration's proposed amendment.

The administration's amendment would permit HUD to require all adults to document citizenship or eligible alien status in HUD assistance programs. Under section 121, as reported, if an individual simply declares—truly or falsely—that he or she is a citizen of the United States, the individual is not required to submit any documentation to support this claim, and there appears to be no basis on which HUD can require such support beyond the simple declaration.

Also, section 121 presently requires a two step verification procedure. If an individual initially fails to produce appropriate documentation of alien status, the Secretary must give a second "reasonable opportunity" to present alien documentation; the documentation must then be transmitted to INS; and the assistance may not be terminated until the Secretary has completed the verification with INS.

HUD believes, as I have indicated, that program administrators under a variety of HUD-assisted housing programs should be authorized to deny or terminate assistance when a family fails to present documentation of alien status at the time required. By law, documents that show that an alien was lawfully admitted must be carried on the alien's person at all times. It seems only fair that a person who wants to receive a Federal housing subsidy be responsible for timely production of the documents needed to prove that the person is eligible for assistance.

A delay in cutting off assistance for an undocumented alien is a delay in implementing the congressional decision denying housing assistance for aliens who are not lawful, permanent residents of the United States. Moreover, the delay operates to deny available assistance resources to citizens and legal residents of the United States.

We ask the committees represented at this hearing to utilize your particular expertise and experience in developing legislative language that will provide for verification of alien status by use of INS information. For this purpose, we urge adoption of the administration's proposed amendments to implement the SAVE system.

We will, of course, be glad to work with the committee staff on language and if you have already drafted that language, if there is an opportunity we are always available, Mr. Chairman, to make sure that it would be technically compatible with other housing statutes and with the administrative requirements of our department.

We appreciate this opportunity to present our views and would be glad to respond to any questions.

[The prepared statement of Mr. May with attachment from John R. Bolton as referred to can be found in the appendix:]

Chairman GONZALEZ. Thank you very much, Mr. May.

Do you have a copy of the amendment that HUD submitted to the Judiciary Committee that we could place in the record at this point?

Mr. MAY. Well, I——

Chairman GONZALEZ. Or could you furnish one?

Mr. MAY. Yes, I certainly would be glad to. As I say, it has been shared with your staff. I think it would be helpful to add it to the record, and would be glad to do so.

[The HUD amendment referred to can be found in the appendix.]

Chairman GONZALEZ. As I have said, you know we think very highly of you, but I think that the main problem that we have faced on this committee has been the inaccessibility of the policy makers in the Department that you represent. We just have not been able to, under any circumstances for the last year, to get your Secretary, Mr. Pierce, to appear before the subcommittee, not only on this issue but others, and it is very difficult for us, much as we love him, to deal with an emissary that really has no policy-making responsibilities and therefore, we are sort of kind of talking to ourselves here.

But we do wish to communicate through you.

The Secretary in answer to a request that Mr. McKinney and I directed on the HUD regulation, suspended its effective implementation from the end of July to the end of September. We appreciate this action. However, the headlines loudly proclaim, Mr. Pierce as quoted as saying throw them out. Throw all these out—assuming, of course, that there were hordes of those that should be thrown out.

Clearly that reflected the traditional animus of prejudice and hostility that has been the common experience down in our part of the Southwest and the Mexican border area.

I can tell you right now that the language is beautiful but when you say that any alien resident challenged and faced with expulsion can appeal to some vague appellate group, you are really reflecting an abysmal ignorance of the reality of that world out there. In the main—and I think Mr. Torres in the case of his father-in-law clearly reveals that—we have a rather complicated situation. It isn't simplistic. It isn't a question of saying, well, the law prohibits aliens. We all know that.

I don't know of anybody in my part of the country that wants an ineligible person to be receiving benefits that by law are denied to him. But the truth of the matter is that if you were to implement as you have presently written the regulations now on September 30, there is no question that in those areas in which you have less than justice-seeking administrators, you would have gross injustice. You would have those who for years who have been resenting public housing and hating public housing occupants, no matter whether they are aliens or not, to be given a chance to really, really clamp down and shut down these programs. Gross inequities would occur.

When a person such as Representative Dornan that certainly cannot be accused of being a wasteful profligate liberal reflects that sensitivity, it is obviously because his district contains those very factors that I am trying to address.

But in the absence of dealing with those persons, the Secretary, or the Deputy Secretary who have to accept the responsibility for the forming of policy, we are again sort of working in a vacuum. I must point that out, that it has been a continuing obstacle to our sober and level-headed consideration of these and related matters and programs sponsored by HUD.

The fact is that any appeal to INS is a laughing matter in these areas. Let me tell you that it isn't a rational question. For example, the local INS director for the San Antonio area was a Carter administration appointee since purified by the Eisenhower processes where you had political appointments and before their term expired they were legitimized and brought into the merit system through executive fiat. This gentleman happens to be of Hispanic, as they call today, I say Mexican-American, descent. Let me tell you if you go ahead and implement these rules what you will have as of October 1 is the breaking down of the doors by INS and other agents. Ask these agents, do you go out and see these individuals on the street corners and round them up because you suspect they are aliens? What makes you think they are aliens?

The director in our district said, well, because some of them wear baseball caps all the time and because others smoke peculiar cigarettes. They are not the customary American-made cigarettes.

This is what you are throwing open, this INS so-called SAVE or computerized system, which at best would be an imposition of a Nazi-like thing. The legislation that the poor aliens have had to face even by my own State Legislature of Texas just 3 years ago in the attempt to save the taxpayers, prohibited access to public schools to any child of an illegal alien. That had to be turned around by a Supreme Court decision but it was passed by the Texas State Legislature. That is different than some of the decrees that Hitler-era Bundastadt passed.

I am just telling you this, that there has to be a more knowledgeable and humanitarian approach than is presently evidenced by the proposed rules of HUD and even the suggested amendments to the Judiciary bill.

I am very, very much concerned, because I have witnessed gross injustices that are not I think identified as American in tradition or in history. They would shock the average fair-minded American. There is no question about what HUD will do about it, unless it really decentralizes and leaves it up to local authorities to screen their applicants.

But if you try—as you do in these rules that I have read and which motivated my asking, together with Mr. McKinney, the Secretary to suspend—to implement this rule as written, what you are doing is saying, you have to provide documents. Anybody will tell you that in our part of the country, as I said at the outset, most of these individuals are not going to be caught anywhere near a governmental activity, food stamps or anything else, much less shelter. I will tell you where they are because I have been there in and around my district and in other States.

They are in the abandoned and condemned former motels and hotels. You have huddled families with five children living in one motel room plus a bathroom with children ranging in age from 15 to 1 years of age. This is where they are. Now and then you pick up a paper and see where these places have burned down and these folks have died.

When we had the recent train chemical spill—we had two in San Antonio, TX in the last 6 months—lasting for about 6 days, two unidentified persons were found dead at the site. Nobody bothered to find out who they were because everybody concluded they were illegal aliens. They were not traveling on the bus, they were not traveling on the pullman, they were riding the rods because that is the only way they will be able to get around without being caught by the "migra" or the Immigration.

When you turn over to Immigration the name of an individual, what you are doing is exposing that individual to have his time-honored conditional castle and his home, busted into by the INS which I think goes against the grain of tradition and industry in our Anglo-American basic libertarian tradition. I am just hoping that at a future hearing, which certainly if we don't do it jointly we will do it by the subcommittee, I hope we can have you prevail on the Secretary or the Assistant Deputy Secretary to join us and listen to some of the colleagues here.

I have monopolized the time because we have been trying to get this through before the implementation of the rules and the sudden announcement with no forewarning to Members of the Congress. So with that, I apologize to my colleagues, and recognize co-chairman Roybal.

Mr. **MAY**. If I might briefly respond.

Chairman **GONZALEZ**. Oh, yes, certainly.

Mr. **MAY**. I appreciate your comments and we are cognizant of the emotional and sensitive nature of this issue. We are concerned that we do the best we can to carry out the mandate of the Congress in the statute in a humane and just manner. As I indicated in my statement, under the HUD rule, it would be the local program operators—so-called program administrators—whether it is an owner under certain types of programs or the public housing Authority in others—who would be the ones who would have the first look at documentation of citizenship or eligible alien status. We are very sensitive to the conference report language which indicated concern about invasion of privacy, to which you have alluded, and therefore the rule contemplates that for a new applicant the documentation requirement would simply be a part of the regular application process.

For those who are participants in HUD programs now, the documentation would be supplied only at the annual recertification—during part of that process, which will be long delayed from the time a rule would go into effect. So it would be part of either the regular application or recertification process and would be done by the local program administrators and not by the INS.

There might be situations if we do decide, for example, to tap into the SAVE system, in which the INS would be involved. As I have indicated, the diversity of the HUD programs and the fact that you have large and small public housing authorities and so on, makes it difficult for us to judge at this stage when, if, and how, the SAVE system might be utilized by HUD as part of its verification effort.

So we want to work with you and others to try to work out a system which is just and humane, but also which responds to the statutory obligation which has been placed on the Department.

Chairman GONZALEZ. I appreciate that, Mr. May. It just seems that in writing the rule or for that matter a statute, you have to use words that can be interpreted and administered in various parts of the Nation. When we say documentation, are we going to demand more in the case of HUD-assisted programs than what is demanded in Social Security benefit programs, where a statement or declaration of citizenship suffices?

I thank you, though.

At this point I recognize cochairman Roybal.

Mr. ROYBAL. Thank you, Mr. Chairman.

Mr. May, I would like to clearly understand the testimony that you have given the committee.

You told the committee that Congress did in fact prohibit HUD from providing financial assistance to aliens in 1981. And you also stated that it had been the historical position of the Department that alien status would not be made a condition of eligibility. This was prior to 1981.

But the so-called mandate of Congress did not become effective, although it was going to become effective on July 30, 1986. Is that correct?

Mr. MAY. Right.

Mr. ROYBAL. So 5 years went by and during those 5 years, the so-called mandate of Congress was not adhered to.

In the meantime, the alien status was not a condition of eligibility. Therefore the people in housing, public housing now may not be eligible under the rules that would be implemented.

But they did not violate the law in any respect, did they, when they went into housing? They qualified like anyone else.

Mr. MAY. That is right, since there was no final rule effective.

Mr. ROYBAL. So they are qualified residents of that particular housing accommodation. They did not violate the law. They are there because they complied in every respect with the law as HUD at that particular time had enforced the law.

Now, so far I am correct, is that not so?

Mr. MAY. I believe you are correct so far.

Mr. ROYBAL. All right.

It is my understanding under regulations prepared by HUD, all residents of HUD-assisted housing must provide documentation of their citizenship and eligibility. That is starting September 30. Is that not correct?

Mr. MAY. Well, actually there would then be a 90-day period, Mr. Chairman, before it would actually be implemented. Then, if you are a resident of HUD-assisted housing, it would only take effect whenever the first time thereafter the occupant came up for recertification as to income and other eligibility criteria.

Mr. ROYBAL. Let us take any particular person who is in public housing at the present time, who is to be recertified. He must then present documentation of his citizenship or otherwise show his eligibility?

Mr. MAY. That is correct.

Mr. **Roybal**. That is to start when you start the implementation of the law.

Mr. **May**. For a current participant it would be the first time that in the normal cycle income would be examined as part of the annual recertification process.

Mr. **Roybal**. We have people in public housing now there legally, through no fault of their own they are there. Many of them, I suppose most of them, came in before 1981. It is quite possible that during that time children were born, and that the family grew. I suppose, in 5 years, maybe even to as many as 5. Let's suppose that there were four American-born children added to that family since 1981.

Now, it is my understanding that under the previous ruling the children could remain in the housing project, but the two parents who may be here without documents or couldn't prove their citizenship would have to leave. Is that a correct assumption?

Mr. **May**. It is correct because the direction of the Congress was that there should be no assistance provided for any ineligible alien.

Mr. **Roybal**. I understand.

Mr. **May**. HUD housing assistance resources should be used exclusively for citizens and eligible aliens.

Mr. **Roybal**. Mr. May——

Mr. **May**. Excuse me, if I just may say, that the interpretation of HUD's General Counsel's Office was that there was no room for maneuver in terms of those who are illegal occupants.

Mr. **Roybal**. Mr. May, I am not trying to blame HUD. I am trying to show the foolishness of a law that does not take into consideration the human being. No fault of HUD's.

Mr. **May**. I understand. I appreciate that.

Mr. **Roybal**. I think in this instance, it is we, the Members of Congress, who take more of the blame than HUD itself. So we have established then, two very important things, I think.

One other thing, I am concerned about senior citizens who may not have their birth certificates, or do not have means of proving instantly their American citizenship. I am not a betting man but if I were a betting man, I would bet you that at this moment, if I were an immigration officer and went over to you, you couldn't at this moment prove you are an American citizen. I am not going to ask you to answer because I shouldn't.

The truth of the matter is that there are senior citizens in the United States, including myself, that cannot prove their citizenship. I am an American citizen because I was born in the State of New Mexico in 1916. That is a long time ago, isn't it? My family can be traced in the State of New Mexico to the year 1610, 10 years before the pilgrims landed on Plymouth Rock, but I cannot prove my American citizenship because I was born at home. The doctor didn't record my birth. I had to go out and get a delayed certificate of birth before the doctor died, but I lost it. The only thing I have are my discharge papers from World War II.

Would my discharge papers prove that I am an American citizen?

The answer is no. It will not.

How else could a person like me prove that I am an American citizen? Suppose I went to the housing project manager and said I would like housing but I have no documentation. In your testimony you say that the proof of eligibility is a birth certificate or other documentation issued to you by the INS. If those are the guidelines, how could I prove if I went for public housing, that I am an American citizen?

Mr. MAY. Well, the HUD rule, Mr. Chairman, does outline an extensive series of documents which would be acceptable, either as proof of citizenship or eligible alien status. I have only given a couple of examples.

Mr. ROYBAL. But not a discharge from the U.S. Service?

Mr. MAY. My recollection is that that is not an acceptable indicia of citizenship but there are a number of other means. May I say, Mr. Chairman, that our problem in trying to develop a way to carry out the will of Congress was that we had a national mandate. We felt that there should be documentation across-the-board for citizen or alien, and we then developed a series of what seemed to be the most intelligent and comprehensive means of documenting either citizenship or eligible alien status. That is a list, Mr. Chairman, which I may say can be added to if in particular circumstances it does develop that others in your status or otherwise have certain documents which we have not listed which we perhaps should have listed to prove either citizenship or alien eligibility.

Mr. ROYBAL. Don't you think that each case should be taken on an individual basis, instead of making guidelines that affect everyone?

Mr. MAY. We felt that the best way to make it a 100 percent nondiscriminatory, uniform system, would be to require documentation nationwide for both citizenship and alien eligibility. HUD's regulation makes action by the owner or public housing agency a fairly cut-and-dried process. But as I have indicated, the implementation will be very much local, and will be a hands-on process so that each individual case will be judged within some broad national parameters, which is the only way we felt we could implement the will of Congress.

Mr. ROYBAL. That couple I tried to describe as coming in with no children and now having children, or any other combination of circumstances, in which there is in that household, either a legal alien, American citizen or anyone that qualifies, but just one out of, say, five in the family—wouldn't that be sufficient to keep that family in that housing project?

Mr. MAY. To grandfather them, you mean?

Mr. ROYBAL. Yes.

Mr. MAY. Well, it would not under our interpretation of the law.

Mr. ROYBAL. Wouldn't it be fair to grandfather in that family under the circumstances, since to begin with there was no violation of any law, they in good faith went and applied, they qualified, they are in the housing now? Wouldn't it be proper to grandfather them in now so they could remain, but in the future starting September 30 perhaps, go along with the recommendations that HUD is making?

Mr. MAY. That is a decision as you indicated previously, that Congress can make, but under the language of the law as enacted and under the conference report, it is clear there cannot be any Federal housing assistance made available to ineligible aliens.

Those resources are to be used exclusively for eligible aliens and citizens.

Mr. **Roybal**. So you have an American citizen living in that household, that child was born during the time they were there. He is an American citizen, the same as you are or I am.

Mr. **May**. I understand that.

Mr. **Roybal**. Why should he be kicked out of the premises?

Mr. **May**. Well, depending on the circumstances, I am not sure that the American citizens would have to leave.

Mr. **Roybal**. How can they remain if both parents are here illegally? That little baby who was born in the United States, is he going to live there all by himself?

Mr. **May**. Fair enough. If the Federal assistance is to be exclusively for eligible aliens or citizens, then those who are not eligible aliens or citizens cannot stay in that unit.

Mr. **Roybal**. In other words, you have to come up with some grandfather clause that would protect American citizens that live in there?

Mr. **May**. Yes, and that——

Mr. **Roybal**. Would you support such a provision?

Mr. **May**. That would be a statutory decision and we really have not established a departmental position on that, Mr. Chairman. You obviously make a strong case for it. There is a very humane motivation behind it.

Mr. **Roybal**. You would, of course, obey the law if that were the law of the land.

Mr. **May**. No question about it.

Mr. **Roybal**. Thank you, sir.

Chairman **Gonzalez**. Mr. McKinney.

Mr. **McKinney**. Thank you, Mr. Chairman.

Mr. May, it is nice to see you again. What we are really talking about here is that in a movement of passion in 1981 because of the Iranian hostage crisis we threw the baby out with the bathwater. In Bridgeport, CT, which is another system that doesn't seem to be working well, we are going unfortunately into our fourth, fourth generation, of welfare clients and public housing occupants.

Chairman Roybal just gave us a speech that is in essence very true. It is true for the northeast as well, with Colombians, Nicaraguans, and Salvadorans masquerading as Puerto Ricans who are second or third or fourth generation. They are American citizens and it was perfectly legal for them to live in these units before we became irrational. I was probably one of them, and it horrifies me now. It was easy to hate the Ayatollah and most of his students in those days. We are trying to make a master decision here that will end up splitting families. We are saying that the 19 year old who has children is not legal but the children are legal. I think that is wrong.

I think we will have to somehow or other recognize the fact that we have to grandfather the family, particularly when there are so many other problems with public housing occupancy.

I understand what the law says. I think the law is wrong. I will speak to the chairman to see if we cannot get one of our nongermaneness friends across the hill to maybe do something about that, to do something about it now that we are over our period of irrationality over the hostages in Iran.

I really feel that when the average public housing tenant has been there for at least two generations and more in many cases in the Northeast, and probably in the Southwest too, that you cannot go kicking American children out of public housing just because their parents are not eligible. It is our fault for having put that stipulation into law and it is our responsibility to put some grandfather clause in. It would seem to me the Public Housing Authorities in this country should certainly be able to document the length of stay of these poor people and that they should be particularly able for those that were legal before 1981. Would HUD be interested in some sort of grandfather regulation for this?

Mr. MAY. A grandfather which?

Mr. MCKINNEY. Well, a regulation or legislation.

Mr. MAY. As I have indicated, I think it can only be done through legislation, because the exclusivity of the prior language makes it clear that it applies across-the-board, therefore, it can only be corrected by legislation.

Mr. MCKINNEY. You know, I see all kinds of terrible human suffering and misery being brought about here. I agree with the chairman that the whole attitude smacks of, if my friends will accept my apology before the fact, "Sho' me yo' paipas" and that bothers me. That is not American, particularly when people are American citizens.

What about a prorated type of public housing rent where one is forced to pay more for not being a legal citizen than one is forced to pay for the percentage of the household that is American by birth?

Mr. MAY. My understanding is that that issue was raised in the many comment periods through which this rule has gone and——

Mr. MCKINNEY. Yes, I know; I have commented on most of them and I am running out of paper.

Mr. MAY. And the conclusion was that a unit is a unit and that you could not prorate the use of it by those who are not eligible under the statute.

Mr. MCKINNEY. Well, we will have to do something about it, Mr. May, because we cannot live with those regulations. The real problem in public housing which even the mayor of the city of Washington has backed down on is not illegal aliens, who are mostly terrified of the system and who work under appalling conditions with no rights or safeguards, but at least in my area, and I know it is in the District of Columbia, is illegal residents. I think that to sort out the "illegal aliens" even though they have been here for 35 years in many cases, is to be a little unfair when most public housing units are filled with what I called second tenants who are totally ineligible and therefore illegal and who most political jurisdictions refuse to face up to.

Let me ask the embarrassing question and you can always claim you are just a messenger instead of the policy-maker. Am I going to have to fight HUD or will I receive their cooperation, if I try to do something legislatively about this?

Mr. MAY. I guess I would say, Mr. McKinney, that we got into this whole thing at the direction of Congress through the enactment of the legislation in 1981, and if the Congress chooses to change that mandate, we will be immediately responsive.

Mr. McKINNEY. OK. I will finish Mr. Chairman, by simply saying that this is one of the most emotional areas of American law today, and it is one of the least understood and it is therefore going to be extremely difficult. But I just cannot tolerate nor take part in a government that is separating families, husbands and wives and children and parents, if in fact they wish and need government assistance.

Thank you, Mr. Chairman.

Chairman GONZALEZ. Thank you.

Mr. Torres.

Mr. TORRES. Thank you, Mr. Chairman.

Mr. May, you cited in your testimony that to understand the mechanics of the alien verification system as applied to HUD programs, it is necessary to recognize first of all that eligibility is determined by local housing authorities, am I correct?

Mr. MAY. In the case of some of the programs, Mr. Torres, it is the local public housing agency, in some cases it is the owner of, say, a section 8 new construction apartment.

Mr. TORRES. Let's stop there then. The project owner selects tenants and makes the determination that the family has satisfied Federal eligibility requirements. Section 235 is the lender that sets the requirements.

What protections are there to prevent project owners or lenders from simply denying assistance on the basis that they—the individual or applicant family, look foreign? This is analogous to the discrimination that will result from the employer sanctions aspect of immigration legislation.

What protections are there?

Mr. MAY. Title 8 protections against discrimination would come into fore in a situation like that. Those protections are there regardless of an intervening statutory requirement. It would provide protection against discrimination, which I gather is what you are suggesting.

Mr. TORRES. But in the case of a public housing authority employee or official, there are certain constraints that apply of the Government. A lender or project owner is not under the same constraints.

Would he not be more discriminating?

Mr. MAY. They are still bound by the Federal antidiscriminatory protections which are already in place.

Mr. TORRES. Thank you.

Thank you, Mr. Chairman.

Mr. McKINNEY. Mr. Chairman.

Chairman GONZALEZ. Mr. McKinney.

Mr. McKINNEY. Would I——

Mr. TORRES. I yield the balance of my time.

Mr. McKINNEY. Will the gentleman yield?

Chairman GONZALEZ. Certainly.

Mr. McKINNEY. There are certain legislative courses that staff has reminded me can be followed. One is to pass H.R.1, which exempts this problem; and the second, which I think this whole committee should, follow, is to write the chairman of the Judiciary

Committee and state that this could be taken care of in the immigration and naturalization bill which is supposedly going to come before us one of these days. I understand Mr. St Germain and Mr. Wylie have already written to chairman Rodino about that.

I think it might have a little more weight if most of the Housing Committee also wrote to them. That is just a suggestion I make, because it is obvious that the only other course we have open to us is to hit our nongermane friends across the hill.

Chairman GONZALEZ. Well, that is a very good suggestion, and we should act on it.

I believe the immigration bill actually is going to boil down to turning out to be a labor bill.

Mr. MCKINNEY. Spoken like a true Southwesterner.

Chairman GONZALEZ. Mr. Wortley.

Mr. WORTLEY. Thank you, Mr. Chairman.

I have a copy of the letter that Chairman St Germain and the ranking minority member sent to Mr. Rodino yesterday, and they offered an amendment to include provisions to permit elderly residents to certify as to their immigration status and to assure that any family containing a citizen or eligible alien may receive housing assistance without regard to the immigration status of the other members of the family.

In addition the amendment would ensure that any family initially determined ineligible for assistance because of the immigration status of its members would be able to have a hearing before the final determination is made.

I think—I would hope the chairman of the Judiciary Committee would see fit to incorporate that into that legislation, H.R. 3810.

[A cover letter and copy of amendment H.R. 3810 referred to can be found in the appendix.]

Mr. WORTLEY. Mr. Secretary, I was pleased to hear you say there is a manual backup for the alien verification before a family is displaced. Do you have any plans right now to monitor the progress of the SAVE Program so that maybe a year from now we might be able to get a report from you on the progress and what problems developed in the attempt to enforce it?

Mr. MAY. Mr. Wortley, may I say that we have not reached a conclusion as to what manner and when and whether we would use the SAVE system. In other words, because of the diversity of the HUD housing programs and the different local program administrators who are responsible, for example, the size of the New York City Housing Authority about which you will hear as compared to the vast majority which are very small, whether they would want to tap into the SAVE system and how and when and so on is a decision that we have not as yet reached.

We also would like to retain the administrative leeway to perhaps forego mandatory access to the SAVE system if it is not cost-effective or if there are other systems in place which are equally timely and effective.

Mr. WORTLEY. What do you have in the way of a backup plan in the event SAVE is not cost-effective?

Mr. MAY. Well, frankly, we had not envisioned having the SAVE system at our disposal, at least when the legislation was enacted which triggers the alien rule, back in 1981. It does appear to offer some additional verification potential, because we have no particular protection currently against bogus documents and things of that sort.

So it can be an additional tool in the verification arsenal but at this stage we have not drawn any conclusions as to how and when we would utilize it.

Chairman GONZALEZ. Will you yield to me at that point?

Mr. WORTLEY. I yield to the Chairman.

Chairman GONZALEZ. That is the reason we have this hearing. H.R. 3810 would mandate use of SAVE or the INS system. You would have no choice. You would have to use it. That is why we are having this joint hearing. That is why we demanded a sequential referral of H.R. 3810 because the provisos in that amendment that was placed during the judiciary markup mandates the use of the system.

HUD would have no choice, no option.

Mr. MAY. That is why we have suggested some amendments and why we would be glad to work with you on whatever form of changes you are suggesting so that they can at least be technically compatible.

Chairman GONZALEZ. I did want to stress the point that what we are facing here in the present version of H.R. 3810, although it was our hope that we would recommend to Mr. Rodino as a result of this hearing something like that amendment should not be part of the package presented to the House when and if it gets to the House.

Mr. WORTLEY. Mr. Secretary, you said that you would be happy to work with us and offer some suggestions. Do you have some suggestions right now?

Mr. MAY. As I have indicated, we would prefer that it not be mandatory that HUD utilize it; and that we have the option as to how we are going to use it. Again, I point out that HUD programs are sufficiently different from entitlement programs, both in terms of their diversity and the way in which they are administered. That may not have been fully focused upon by the Judiciary Committee when it drafted that provision.

So I think that the HUD-assisted housing program verification system really needs to be considered separately. That is why it is valuable that this committee with its particular expertise is focusing on it.

Mr. WORTLEY. I think the key word here should be compassion and understanding in enforcement of something like this.

Mr. MAY. I am sorry, what?

Mr. WORTLEY. I think compassion and understanding are the key ingredients to enforcement of the program.

Mr. MAY. That is very much our objective as long as we live up to what the law requires of us.

Mr. WORTLEY. I yield back the balance of my time, Mr. Chairman.

Thank you, Mr. May.

Chairman GONZALEZ. Thank you, Mr. Wortley.

Let me just conclude by saying that our hope is actually twofold, one that HUD, which at our request, after the enactment of the legislation will withhold implementing the rules. I wanted to point out to Mr. Roybal that the reason there is a gap here between the time that the Congress approved this type of restrictive legislation or prohibition and the time that this announced rule and regulation was to take effect, was that we in the committee requested a deferral of implementation for 1 year if I remember correctly.

Mr. **May**. Right, in November 1983.

Chairman **Gonzalez**. And the reason we did was that we realized that that amendment had actually been crammed down our throat under the passion of the moment, as Mr. McKinney so eloquently stated. Unfortunately, it really went through on almost a straight party line vote, and it was to no avail that we tried to point out that HUD programs were not to be considered on the same basis as entitlement programs, regardless of the desirability or undesirability of that type of legislation.

I think that what must come through in these hearings is what we face in real life probably in some other sections of the country. Everybody forgets that about 40 to 45 percent of the illegal entry into this country is not over the Mexican border, it is from other points. But the Mexican border gets all the attention because of a traditional atmosphere of dislike or hatred really.

I have had phone calls in my district and letters saying what are you worrying about, the aliens? We have elected you to take care of our citizens. If you want to put a stop to all this just shoot them. Shoot them as they try to cross the border.

So you have this kind of a thinking that is still pretty much ingrained in some, particularly in the State of Texas.

I don't know about New Mexico, Arizona, or California; but I do know Texas. I do know that as late as just 3 years ago in one of the hill counties that we call Kerr County, you had the third posse hunt which had a group of horsebacked, guntoting, night riders who went out to hunt some animal. They went out hunting and just riddled with bullets, some unfortunate person presumably alien. For some still to be determined reason, passions arose at that moment. You had 3 such occurrences within the last 6 months alone in my part of the country.

You have a sort of residual antipathy, prejudicial and very systematic course of mal querencis, as they say in Spanish. All of these rules and regulations that are promulgated on a national level, all they do is feed these hatreds, these ancient but still present residual hatreds. And a lot of injustices are involved.

I sympathize with those attempting to enforce the law, but nevertheless I do know that very serious abuses continue to occur and it is just impossible to on a national level in such complicated programs as housing programs that are subsidized.

For instance, have you or the Department made any estimate as to budgetary impact? What would be the cost if you did decide to go with the SAVE Program?

Mr. **May**. Again, Mr. Chairman, we do not have an estimate because we are not sure to what extent we would tap into this SAVE system for which programs and of what magnitude from which localities.

Chairman **Gonzalez**. What bothers me is, for example, 202 housing where you use——

Mr. **May**. Section 8.

Chairman GONZALEZ. Section 8 certificates. As Mr. Torres brought out you have private individuals there. Suppose they decide that they want to utilize them, will we subsidize purchase of a computer for them? These are the things that——

Mr. MAY. There are a lot of options, Mr. Chairman. In that case, for example, it might be better to go through the local HUD office if there is a link-in with the SAVE system. There might be a way to tap into HUD Central if that is the most cost-effective way, or as you indicate, if they have a PC and their business is of sufficient magnitude they might link in directly with the SAVE system.

There are a myriad of alternatives which have to be addressed, because of the diversity of the programs and the varying sizes of the managerial responsibilities at the local level.

Chairman GONZALEZ. Does anybody have any questions? If not, Mr. May, do you have any statement at this point?

Mr. MAY. Thank you, Mr. Chairman. We would be glad to work with you. We know it is a tough tangle and we would be glad to try to help untangle it with you.

Chairman GONZALEZ. Well, we thank you very much. We appreciate the time you have given us.

Chairman GONZALEZ. Our next witnesses happen to represent some distinguished folks who early expressed concern in this area. We will call Chairman Emanuel Popolizio, New York City Housing Authority; Ms. Cushing Dolbeare, Founder, National Low-Income Housing Coalition; and Msgr. Nicholas DiMarzio, executive director, Migration and Refugee Services, U.S. Catholic Conference.

My understanding of my colleagues is that both Chairman Popolizio and Monsignor DiMarzio both have a time problem. I think they have some airplane schedules that they have to meet.

If Ms. Dolbeare has no objection, we will recognize Chairman Popolizio first. We have him listed as first, so we will follow that listing.

Thank you for your early communication with us, Mr. Chairman, expressing your deep concern.

STATEMENT OF EMANUEL P. POPOLIZIO, CHAIRMAN NEW YORK CITY HOUSING AUTHORITY

Mr. POPOLIZIO. Let me say at the outset I want to return your gracious attitude because I have had excellent cooperation from all the legislative representatives that I have met, not only cooperation in terms of response to my requests, but as I noted here this morning, I am pleased to see how clearly they understand the problems that are before the House and the logic they employed really almost puts me out of business, except I refuse to yield at this point.

As you know, sir, I am chairman of the New York City Housing Authority. It is the largest housing authority in the United States. I would say my constituency including perhaps people who are overcrowding some of our apartments, is somewhere in the neighborhood of about a half million human beings.

I think it is important that we bear in mind that we are talking about human beings, not real estate. I think it is important that we bear in mind especially when you consider the analysis that Congressman Roybal and you, sir, Congressman Gonzalez and Congressman McKinney, have focused on this problem to clearly show that this is probably an ill-conceived attempt to deal with an ad hoc situation that has produced dangerous problems for us.

I use the word dangerous advisedly in the sense that it is very dangerous for human beings to be inhumane to their brother man and brother, sister for that matter, in terms of the fact that they are in a better position economically or otherwise than their fellow man.

I think that this is the core of the difficulty because the fact of the matter remains—there was some reference made to gestapo tactics—that the real problem is the lack of sufficient housing. The real problem is the posture that says that we will have no more new units, no more new construction. And it is the thinking that takes that position in the light of an authority like mine where I have a waiting list of 200,000 applicants who are in dire need of housing.

It is this kind of thinking that produces really a certain illogic and an illogic that might conceivably come from a priority feeling and certain latent prejudices that all of us might have, maybe we are all guilty in this sense, and instead of dealing with the problem at hand, what do we do, we look for a scapegoat.

Who do you get as a scapegoat? The defenseless one. The one who has a poor constituency. The one that cannot hire expensive lawyers, the one that has no advocate to present his or her cause, so we blame it all on the illegal aliens and it would seem to me to adopt this posture results in some of the inconsistencies that were made apparent this morning.

I might say parenthetically there are some very serious legal questions that will be produced because of this legislation, and I want to tell the Members of this Congress that I have just verified the fact that the city of New York has filed a summons and complaint and is suing the Secretary of the U. S. Department of Housing and Urban Development, Samuel R. Pierce, Jr., and the Regional Administrator of Region 2 of the U.S. Department of Housing and Urban Development, and while I have not read the complaint, it is a complaint of some 41 or 42 pages, it is clear that the thrust of the argument is that on many constitutional grounds they feel that the implementation of these regulations should be enjoined.

They are arguing rather cogently in my view that there are certain basic rights that American citizens have that will be violated and transgressed in the event this law goes ahead willy-nilly.

Now, for a moment let's consider what happens in what we call the real world. Let's go to New York City. A city of 7.5 million people and a city in my mind which is a microcosm of the world. Everything goes on in New York City, everything is bad in New York City, everything is wonderful in New York City.

We get the problems first and we take all the criticism that ensues in dealing with issues as they evolve and come before us. Now as chairman of the housing authority where I get letters, hundreds of letters from all over, from legislators, social workers, housing people, delineating the terrible and difficult problems that many people have and the lack of housing for people who are decent, hard-working people, you cannot help but wonder what are we doing when we say stop what you are doing, and I will come to SAVE later on—stop what you are doing, we have got a big problem of illegal aliens.

By the way, we don't know how many illegal aliens there are. We don't know really what you need to do, but in order to assure that you can do it we will pass some Draconian law that will rip these people out of their apartments, that will take families and render them asunder, deprive people of basic human rights—never mind constitutional rights, and then as a reward we will drop them right out in the street.

Bear in mind that for 50 years, and we must delineate between an illegal alien and the word "ineligible", illegal aliens are not ineligible. While I am talking an illegal alien has a perfect right to make an application to any housing authority and that should not be grounds for denying him occupancy of a unit. It has happened for 50 years that illegal aliens have been eligible to occupy a public housing unit.

This has been well known. It is not something arcane, it is not a secret that was something that no one knew about; everybody knew about it. The courts know about it. In the State of Texas the courts have said, don't tell me about illegal aliens, these are human beings, these are children, educate them, support them, they are here.

Chairman **Gonzalez**. Pardon me for interrupting you, it is very embarrassing. We have a recorded series of votes and we must allow the Members a chance to record their presence on the floor. Unfortunately, there will be 1 plus 2 successive votes 5 minutes apart. We will recess for 15 minutes and return. I hope you are able to stay with us. I know you have a time problem.

Mr. **Popolizio**. I will stay, but I warn you this will give me more energy.

Chairman **Gonzalez**. Well, that is OK.

Mr. **Roybal**. Good for you.

[Recess.]

Chairman **Gonzalez**. The committee will resume.

Mr. Popolizio and the two other witnesses, thank you for your indulgence and your patience.

Mr. **Popolizio**. Thank you, Mr. Chairman.

As I was saying before I was interrupted by the Congress of the United States, I feel that the proposed regulations, if they are not amended, will wreak serious havoc on the public housing authorities throughout the country.

There are some people that are under the impression that on this issue, there is a difference between what big housing authorities think and small housing authorities think.

I submit for your consideration that the only difference between the large housing authorities and the small housing authorities on this issue is one of degree, not of kind.

I am sure an analysis of the impact of this law unamended would have as much adverse affect proportionately on small housing authorities, as indeed, it does on the larger housing authorities.

As far as the law itself as it stands, I have stated before, and I repeat, to allow people to be eligible for a term of 50 years, set up family relationships, have children, et cetera, and then suddenly swoop down in an ex-post facto manner and deny them occupancy in housing in heretofore you made available to them, seems to me to be a form of moral entrapment.

I think added to that the hysteria about illegal aliens as though they were proliferating all over the place is also counterproductive and doesn't serve the purposes of either the immigration authority and certainly of our country.

As far as the number of illegal aliens, I have not seen anything that is valid to indicate the number of people that we are talking about; however, I think a certain amount of common sense and a certain amount of light in lieu of just pure heat, would indicate several things.

No. 1, if a person were an illegal alien, if he has been in a housing project any period of time, it is probably fair to assume that with the law as it is with the discretionary powers of, I think, the Department of Justice or the Attorney General, with policies that I have heard that are actually espoused by the Immigration Service, something to the effect they don't deport elderly citizens, they don't deport people who are ill—in other words, there are situations where it is known to the authorities that people who do not comply with the law are allowed to remain and not evicted.

May I say this in terms of desire to evict. We have problems throughout the country with drug abuse. I would appreciate more if the people who were the proponents of evicting illegal aliens would put their heads together and simply accept from the cumbersome regulations that we have, hearings, et-cetera, those cases where arrests or convictions are had in drug abuse cases, in those cases where premises are used to dispense drugs.

The children of our country are being adversely affected in that area. That is much more important than to try to find very few, very few illegal aliens, if indeed they are all in public housing authorities.

I would like to say this in connection with the SAVE Program. I want to be fair about it. I gathered from the response of the witness who testified in behalf of HUD—he was asked what back-up program he had.

I think it only fair to state he did not give a clear answer to that. I don't mean to be facetious. It would appear that HUD at this point not only does not have a back-up program, doesn't even have a program up front. It has no program.

And they are considering now the expenditure of vast sums of money. They are considering now instituting as a matter of law and making mandatory the use of SAVE which will entail, as far as the New York City Housing Authority is concerned, immediately employing some 56 additional housing assistants in order to deal with it.

It would also mean we would have to have terminals at each one of our 277 federally funded projects. It would be several millions of dollars that would have to be spent right then and there on a system, not because I say it, but for instance, the Department of Labor of the State of New York, in a letter dated February 7, 1986, addressed to Mr. William Heartwell, the Interstate Conference of

Employment Security Agencies in Washington, signed by Lillian Roberts, Commissioner of Labor.

This is what the letter says, among other things, referring to the SAVE system, it says:

> The pilot project established that the data on the INS.

That is immigration.

> INS computer files is extremely unreliable. This led to unnecessary questioning of the status of many individuals legally in this country under special programs whose legal residence apparently is not recorded on the INS files. An underlying weakness of any mandated program to verify the status of aliens, of course, lies with the fact that the claimant himself indicates whether he is a citizen or noncitizen. If the claimant does not indicate that he is a noncitizen, no verification of his status is undertaken.

Going on, reading from that letter, they state here—this is the pilot project now—they say on their findings:

> There was no significant benefit for the Department of Labor to participate in the SAVE Program. Of 12,238 claims filed by noncitizens during the test period, only 54 cases resulted in overpayments totaling $51,722. It should be noted for perspective that New York State paid over a billion dollars in benefits that year.

Now, here is a test made in the field. Here is a test made in New York State. Here is a test that is being responded to by the Department of Labor, which surely would have an interest in getting verifiable data and correct data, as any other agency of a sovereign State would.

And here specifically the State test made, found it to be unreasonable. The amount of illegal aliens they found really makes me think that we are using a sledge hammer to drive a tack.

This is corroborated by the statement made——

Chairman GONZALEZ. Mr. Popolizio, I wonder if you could offer that letter of the Commissioner of Labor for the record at this point.

Mr. POPOLIZIO. I do, sir.

Chairman GONZALEZ. Without objection.

Mr. POPOLIZIO. It is a letter dated February 7, 1986, addressed to Mr. William Heartwell, as I said before. It is signed by Lillian Roberts, Commissioner of Labor of the Department of Labor of the State of New York.

[The letter of February 7, 1986 from Lillian Roberts to Mr. Heartwell can be found in the appendix.]

Mr. POPOLIZIO. I am sure that you gentlemen and ladies are familiar with the statement of Alicia Smith, staff director of the State of New York of the National Governors Association, and a report on a Florida pilot project shows they were dealing with two-tenths of 1 percent.

That is the amount they found that were illegal aliens in the unemployment INS Program.

Now, I submit, to innovate a system that has many serious problems—and I suggest perhaps even constitutional problems involving questions of right of privacy of citizens and right of privacy of noncitizens—to innovate a program like this without proper preparation, and to authorize the expenditure of vast sums of money, and to actually have a representative of one of the agencies that is to implement this thing, and to have that person asked, "How do you propose to implement this"—and you gentlemen are the judge and jury. I did not hear a clear, definitive answer as to how it would be done.

This would be, you can understand, tragic, in view of the fact the law is mandatory. Once that law is passed they will have to find a system.

You will notice in the testimony given by the representative from HUD, he said that we would have to consider the law as it impacts on the various programs that we have in HUD, which means that even the law as it stands—let's assume we were all in favor of it—would not necessarily even be workable.

But the fact of the matter is that the law does not have the appropriate predicate to expend the moneys of the taxpayers of this country in attempting to eradicate a situation that no one knows to exist to the degree that this statute calls for.

I think that is a tragedy, and I think it is inconceivable that with the traditions that we have in this country for peoples all over the world to indulge in this kind of a witch hunt to find illegal aliens when we should be putting our heads together to see how we can get the funds and how we can bring about more construction of new units to house the people of our country that are in dire need of it.

Let's not quibble and use illegal aliens as a scapegoat. I fought in World War II, as did Congressman Roybal, and one of the reasons I fought was to do away with the Shibboleth that you can get a scapegoat and blame him or her or that group for everything and not deal with the reality and the problem at hand.

The problem that we have as a nation is one of compassion, caring about our fellow man, and as a nation, we have to be careful that we don't become so affluent that we forget that our mission in life is—and it may be a little corny to some—it is to save our souls.

Let's not lose our souls in our quest for this foolish and frenetic folly of blaming everything on the illegal aliens and invoking a system which is inhuman, injudicial, and in my view, unconstitutional.

Chairman GONZALEZ. Thank you very much, Mr. Popolizio, not only for a great statement, but for your sustained interest from the very beginning.

I think yours was the first letter from an official of any kind expressing concern about the proposed rules and regulations.

[The prepared statement of Mr. Popolizio can be found in the appendix.]

Chairman GONZALEZ. The fact is that you are the chairman of the board or the commissioner of the largest public housing authority in the country.

When your administrators, your executive director and the like have discussed this in view of the HUD-originated rules that were supposed to be implemented by the end of July, what was their interpretation?

What would it have required them to do and how did they, if they did explain to you, propose to carry it out? Were they going to demand certain documentation of every single tenant?

Mr. POPOLIZIO. This is what they would ultimately have to do. The only question was when it would be implemented in terms of time.

They do have some timeframes in between. The exact time periods I don't know, but I have staff here if that information is necessary.

But the point is that we realize that when we had our annual income reviews, every single one would have to have added to it the special interrogation involving the possibility of any illegal aliens.

And it would mean then the employment of additional staff, additional time and there was mention made here before by one of the Congressmen—it may have been McKinney—who said something to the effect, "Why can't it be done at the local level, this verification?"

Well, it can be done at the local level. I am telling you that it can. We don't need SAVE. We don't need this fancy system.

I will tell you why we don't need it, because I am convinced that we do not have a big problem as far as illegal aliens are concerned; however, if you put this administrative burden on us—and incidentally, there is no money provided for me to pay the extra help that I will have to employ in order to do this.

All they simply say is, "You do it like it was just another piece of paper." Not so. Then they say in their regulations, they say the applicant will have to get his or her own information.

Well, I would like to see the person who prepared that regulation, take them with me to the second floor at 250 Broadway to see the stream of human beings that come there that can't speak English even, and you tell me what you tell them to do, go and get it yourself, and tell me if you can go home with a clear conscience to your family and say, "I am a fine American citizen and I am fulfilling the law and carrying it out in the American tradition."

It is nonsense. That is not the real world. The real world is tough, kind, cruel, compassionate, all the paradoxes that human beings bring to any issue, rich or poor, and to ignore it in order to have some neat terminology that satisfies some people while they are having their cocktails is not the American way.

Chairman GONZALEZ. Thank you very much.

Mr. Roybal? We thought we would ask you the questions at this point so you would be free to leave as soon as we finish.

Mr. POPOLIZIO. Yes, sir.

Mr. ROYBAL. I was very much interested in the statement you made with regard to the unfairness of the regulation. You stated the core of your argument is that the regulation is unfair, inhumane, and an administrative nightmare.

Mr. POPOLIZIO. That is right.

Mr. ROYBAL. Are you telling the committee that it would be almost impossible to administer?

Mr. POPOLIZIO. I am not one to equivocate. I will answer your question directly.

The answer is, yes. Now, I would like to say a word, having said yes. I took an oath to carry out the laws of this country and the rules and regulations. I will do that.

I will do like everybody does, the best they can in accordance with what they have at hand. If you told me, "This is the law of the land, you must carry it out," I don't care how difficult it is, I will endeavor to carry it out as well as it can be done.

My projection is that notwithstanding the willingness of my staff—and I have a tremendously marvelous staff—that it is a matter that is beyond the usual human ability to accomplish within the parameters of the law and what appears to be really the hidden intent of this request.

Mr. **Roybal.** What you are telling the committee, then, is it can be done, but there would be a tremendous cost involved with that.

Mr. **Popolizio.** Absolutely.

Mr. **Roybal.** You told the committee in order to handle the job, as you see it, it would take at least 56 additional people and it would be a total cost of $1.6 million per year.

Mr. **Popolizio.** That is right.

Mr. **Roybal.** That is in addition to your cost at the present time.

Mr. **Popolizio.** Yes, sir.

That doesn't take into account the terminals we are going to have to have. It doesn't take into account the monthly rentals for telephone lines, and it doesn't take into account what the Government's report says that, the Immigration and Naturalization Service does not have all their files in their data bank.

Also, it doesn't take into consideration that the Immigration and Naturalization Service in April of this year cancelled the contract in order to implement SAVE, and by anybody's estimate who deals with preparing contracts and setting them out for bids, the Immigration and Naturalization Service will not be able to get started on this for another 1½ to 2 years.

So, I mean, this is the kind of folly that we would be going into.

Mr. **Roybal.** So, the base additional cost would be at least $1.6 million.

Mr. **Popolizio.** More, sir.

Mr. **Roybal.** Of course more, but you are not taking into consideration in this figure the various other items you have alluded to, and you have not yet figured out actually what the full cost would be over a period of 1 year following the date on which you have to start the implementation of the rule.

Mr. **Popolizio.** Not with the specificity that your question is inquiring about.

Mr. **Roybal.** Can you give me a ball park figure?

Mr. **Popolizio.** Yes, somewhere between $3 million and $4 million, at least initially.

Mr. **Roybal.** Let's just take the $3 million figure.

I agree with you. I think it will probably be in the neighborhood of $4 million. If it is going to cost your agency that, I wonder what it would cost Los Angeles, for example.

I can't ask you that question because you don't know the situation out there. It seems the cost would be prohibitive. Would you agree?

Mr. **Popolizio.** I do, because you just add in the other authorities throughout the Nation and you will see.

For instance, in arriving at some of my figures—I know you don't think I took them out of the air. One of the items, for instance—I said, how much would it cost for a terminal, just the terminal now. I got a number of $2,000. I have 277 projects. I used a rough figure of 3, 2—I flunked math, but that comes out to $600,000 just for the equipment.

That doesn't talk about installation, doesn't talk about the telephone lines, doesn't talk about the monthly cost.

That is just my agency. So, you can see that as these figures mount up for the implementation of this program we are talking about many millions of dollars, many millions of dollars.

Mr. **Roybal.** It is very difficult for me to understand how we as a congress, and I guess as human beings, living in a very affluent country have certain things to contend with.

We have the Gramm-Rudman law which I am glad I voted against. But we have certain restrictions that we have to comply with in order to bring some reasonable adjustment to the expenditures in the country, and still we come up here with a plan that is going to cost this much money without examining the fiscal problems that surround the implementation of the law.

It is hard for me to understand that. I am an accountant by background. I used to be an accountant a long, long time ago, so I still know a little bit about the accounting system and it just doesn't come out.

Mr. **Popolizio.** Congressman, if you were an accountant, you must be suffering a great deal of anguish when you run these figures through your mind, because as they go through your mind you realize not only are we spending this kind of money, but we don't even know what we are exactly going to spend it on.

We have a system that has been declared—that we are relying on the Naturalization Service, and I am sorry that the Commissioner or some other representative wasn't here to respond—where it has been stated that the data that they have has been known to be inaccurate and the number of years that they think it will take in order to get the data bank in there is several years beyond the contemplation of this legislation.

That is why I said in the beginning it is ill-conceived, this legislation—it has not been thought out. It is something that came out of our viscera. Let's admit it. Let's call it back. Let's admit our frailty, our error, our humanity. Let's do that, and let's reconstruct the situation so we can enjoy our days and our conscience.

Mr. **Roybal.** We have heard testimony that the regulation is unfair, that it is inhumane, that it is an administrative nightmare, one that can finally do something about the implementation of the law, but in so doing it will cost a tremendous amount of money.

Mr. **Popolizio.** Throughout the Nation, astronomical.

Mr. **Roybal.** Later on this afternoon, I would like to go into the humane side of this when others are testifying. If you look at it from the standpoint of people who are there, what is going to happen to them?

These are the questions I will be asking.

Mr. **Popolizio.** I am glad you asked that question. If you follow through the procedures that we have to follow, let me show you what happens.

Let's say this nice person here is an illegal alien. So, I make up my mind now I am going to put her out. She can't give me whatever you want, birth certificate or whatever it is.

According to procedures that HUD has now, there are certain administrative procedures that take no less than 6 months. And if you need the specifics on that, I have got a member of my staff who will give it to you.

But accept my statement. It will take 6 months. Once the 6-month period is over, then you are allowed to serve a petition and bring summary proceedings to evict this tenant.

Now, I go into court and I say, "Judge"—this is a housing court judge. Now, I don't say in an approbating sense, but a housing court judge deals with the first echelon of pain and anguish of our society and the poor.

They are dealing mainly with landlord and tenant matters every moment of the day, all right?

Now, I bring people's exhibit No. 1 in, and I say, "Put her out, and I am going to submit to you that these are the regulations and she has failed to submit proof of her identity as a legal alien."

So, I leave now this housing court judge. He is looking at me and he is saying, "Well, where do I go from here?"

I say, "Judge, I want her evicted. The law says she hasn't submitted proof as an illegal alien."

All right. There are two things. let's suppose the judge says, "OK, I have got to decide, find. I find her an illegal alien."

Now, I ask you, according to the law, what do I do with her? Do I eat her? I am going to put her on the street now. Now what do we do with her? She is on the street with her children. I have got 200,000 people waiting to get into every apartment I have got.

It becomes really bad. You are making the Public Housing Authority an arm of the Immigration and Naturalization Service. You are making the Public Housing Authority a policeman in my projects, and you are giving us a mission we were never trained to do, never intended to do, and more importantly, we should not be doing.

Mr. ROYBAL. Thank you very much.

Chairman GONZALEZ. Mr. Torres.

Mr. TORRES. I have no questions, only to thank the witness for an excellent statement before us. Thank you, sir.

Chairman GONZALEZ. Thank you very much, Mr. Chairman. You are excused, free to return to New York, the good side of New York.

Mr. POPOLIZIO. Well, I want to thank you all for your past kindness, generosity and cooperation, and I thank you for your patience with me, and I promise you I am not going to evict this nice person.

She is one of our witnesses, and I have read her record. She has a very distinguished record in housing and I wish I had her expertise. But gentlemen, take her expertise, add my passion to it, and I am sure you will agree that we should do the right thing under the circumstances.

Thank you.

Chairman GONZALEZ. You have our consent to take her if you want her. It is up to you to confront the wife more than the INS. I think that would be a bigger problem than INS.

Monsignor DiMarzio, we know you also have to get back to your district, so we will recognize you.

STATEMENT OF MSGR. NICHOLAS DIMARZIO, EXECUTIVE DIRECTOR, MIGRATION AND REFUGEE SERVICES, U.S. CATHOLIC CONFERENCE

Monsignor DiMarzio. Thank you for the opportunity to speak here today. The invitation was first extended to Archbishop Mahoney of Los Angeles, but his schedule prohibited him from coming here today and he has asked the U.S. Catholic Conference to represent him.

I am Rev. Nicholas DiMarzio. I am the director of the migration and refugee services for the U.S. Catholic Conference, and I have experience in this whole area of dealing with the problems of refugees and immigrants in our country.

The statements this morning, I think, have clarified the issue very much, and we are also very much opposed to the enactment of the immigration section 221 in the H.R. 3801 bill.

Certainly, we do find section 246 in the housing bill, H.R. 1, preferable to the immigration language, although we are not very happy with H.R. 1 that, and I will outline the reasons why we do feel that this is an unnecessary part of the procedures regarding the admittance of public housing, that should be eliminated.

One of our basic problems with the regulations would be the problem of the senior citizens, those who in the housing bill would be exempted are over 62.

But in the immigration bill there is no mention at all about the problem of senior citizens. We are very much concerned because those seniors will have the most difficult time in proving their immigration status if they are elderly and foreign born.

We have to remember how our country started to keep records of people coming to the United States, and it wasn't until 1924 that there were even records issued to people, and those records also have taken various forms over the years.

It wasn't again until the Second World War when all aliens were required to register and some of them did receive some documentation.

But when I listened to your comments, Mr. Gonzalez, it really resonated in me and my experience. I know you were considering the Southwest of the country and the problem with the Mexican-Americans who have been here, for generations or who came as small children, but I also would echo the Northeast. I am from New Jersey myself, have worked with immigrants since 1970, and my own grandmother, who became a citizen only in 1974, came to this country at the age of 9 from Italy. She became a citizen so late in her life because I really insisted that she could become a citizen.

She always wanted to become a citizen, but she could not prove her entrance into this country and only because I was expert in the immigration law and insisted, we were able to obtain documents from a ship registry—she remembered, luckily, which ship she came on—to be able to prove her situation.

I think that is a very common occurrence that will happen, not only with the Euro-ethnic elderly, but with the Asiatic, with the Chicano elderly people, and also I am afraid with the Puerto Rican people, especially in New York City, where they will be questioned as to if they really are Puerto Rican or—of course they are U.S. citizens—but this will always be a question.

So, the difficulty, especially with senior citizens, must be recognized, and if we cannot eliminate the program, at the very least we need to include the housing bill language in the immigration bill to safeguard against a real tragedy that would occur in harassing some of our most loyal citizens who are the seniors.

Our other problems with the SAVE Program have been echoed this morning in previous testimony. Our problem is that the system has never been adequately evaluated, nor is its reliability tested.

In view of the INS history with its overall recordkeeping and management problems and no testing of the SAVE Program, we would be walking into a blind alley here, not realizing the consequences of what would happen if persons would not be able to obtain the verification in a timely manner.

There is a discrepancy, obviously, between the HUD rules and the immigration bill rules. The immigration bill rules would leave very little leeway for any kind of process. The HUD rules that Mr. Popolizio mentioned today would give some time, at least, for people to comply with the rule.

In the immigration bill it would be an automatic exclusion if they could not produce adequate documentation. It certainly is clear that they are not taking into account various categories of people who are legally here.

It is certainly easy for someone who is a permanent resident to produce what would be called a green card, the I–151, but there are others who are here under the law, the refugees who for the first 2 years do not have green cards, other people who are entrants who also have no alien registration card, and many asylum applicants who are here legally pending the disposition of their cases.

So, there are vast categories of people who are really entitled to benefits and to be here that are not really taken into account in the immigration regulations.

They are somewhat taken into account in the HUD regulations, but again, this system would supersede what HUD is going to do and put the SAVE in, the SAVE system which is certainly unproven and is not taking into account many of these other intricacies of the law which have not been mentioned.

I think we have another difficult problem and that is regarding the dimension of what this problem is all about. Certainly, there have been assumptions about undocumented aliens in our society that they are takers and that they give nothing.

But the research abounds that really they are giving more than they take from the public coffers. I myself, in my doctorial dissertation recently completed with Rutgers University in New Jersey, did a study on the social impact of undocumented aliens in the New York metropolitan area.

In a sample of over 1,800 undocumented aliens, I found very little evidence of usage by undocumented of any public transfer systems, much less housing.

Housing is a very difficult benefit to obtain in our society. Mr. Popolizio mentioned there are 200,000 people waiting in New York

City and those numbers are smaller in other places, but in proportion they are probably the same.

It is not an easy benefit to obtain and there is no proof that we have any large scale problem of undocumented people in public housing.

So, it seems that we are addressing a problem that is ill-defined, not proven, a problem that will cause only more problems for many innocent people who will be unable to easily prove their immigration status.

Our concern also is for the children in the units that are mixed units in the sense that the parents might be undocumented, the children are U.S.-born citizens.

This was well taken care of this morning in the previous testimony, but certainly we are concerned about that issue and we would be very much concerned that they would not be excluded because of the implementation of this kind of a program.

I think also if we were to look logically at what is happening here and perhaps see the folly of what we have engaged upon with these regulations, is that we probably are excluding the most documented of the so-called undocumented aliens from public housing, because in order to gain entrance into assisted housing, first of all you have to give proof of your income, which is acceptable only with a W-2 form.

So, certainly these people are working, paying taxes, and also with the new regulations, will have to give their social security number.

So, when we say "undocumented", what is undocumented about them except their status? They are paying rent. They are not living there free. This is not an entitlement program, but a program they have waited in line to receive and they are complying with all the other regulations.

It was not against the law for them to enter, and they are complying with the law in paying their fair share of what was required of them.

So, it seems that we are really looking at this program in the wrong way. We certainly are not against saving what needs to be saved for those who are entitled to it, but it seems in this program that very little will be saved, if any.

We will only cause greater injustice on families with American-born citizen children and its probable ineffectiveness and unproven advantages will have brought the U.S. Catholic Conference to conclude that the program should be postponed at the very least, and also if we cannot postpone it, that at least this committee amend the immigration bill as you can, to carry the language of your own bill, which is certainly preferable, although not perfect, but preferable to what is contained in H.R. 3810.

Chairman Gonzalez. Thank you very much, Monsignor.

[The prepared statement of Msgr. Nicholas DiMarzio can be found in the appendix.]

Chairman Gonzalez. Indeed, and in fact, in demanding a sequential referral, that is, in fact, what we have done. We have sent back our recommendation to the Judiciary Committee that in this section they incorporate the terms of H.R. 1 as approved by the House.

I think all the questions I could have possibly had you answer, have been, and done so very succinctly and eloquently.

So, Mr. Roybal.

Mr. ROYBAL. Thank you, Mr. Chairman.

Monsignor, we have heard as we have gone through the hearing, of the situation of the individual or individuals in public housing.

What concerns me more than anything else is the family, the separation of families and what that would mean if this rule is actually put into effect.

I, for example, have a friend who is in public housing in Los Angeles. He came to California under the Bracero Program in 1960, I think it was. He married a young lady at that time. They have three children. They live in a housing project.

Her mother was born in the United States, but can't prove it. She has Alzheimer's disease. If this ruling takes effect, the husband will have to go, and he will probably have to take his mother-in-law with him, because she can't prove that she is an American citizen. That, in effect, will separate the family if that takes place.

Now, that wouldn't take place, of course, because any couple that takes care of a patient at home the way they are taking care of this mother, would definitely not stand for the separation of families.

But what we are doing, I think, in this particular instance, is forcing that eventuality to take place. There are many families that, if this takes place, would face that one day when they have to make that decision.

I can see families being separated all over the State of California and all over the country.

My question to you is, Do you agree with statements already made, that these regulations are inhumane, that they have not in any way taken into consideration the individuals that are involved, and can you give me your opinion with regard to the danger of the separation of the families and what social impact that would have?

Monsignor DIMARZIO. In general, I do agree with your previous statements, and certainly as a trained social worker I can give you some of my opinion on what separation of families is all about.

We are experiencing in our society today, unfortunately, too much separation of families, mainly by divorce and other tragedies that seem to be befalling our society.

The fall out from the separation of families—many times it seems a harmless separation in divorce cases—gives us a very good indication of what really does happen to families, how children are affected adversely, psychologically, and in many different ways. So that certainly the principle of family unification underlies our immigration laws and we have to be very careful to preserve that.

Unfortunately, I see afoot in our society today a movement that would take away the rights of citizenship by birth from people. There are those who are proposing today that being born in the United States isn't enough to claim citizenship.

I think that is certainly changing the basic approach that the United States has had since its inception as a nation, that those who are born on our soil have the right to citizenship and attaching this rather to the—to what they would call a blood relationship to parents who have a legal relationship is certainly not something the church would like to see put into effect.

We would certainly have to go and turn the tables around in our own society and look and see who would have residency here.

People who came here as immigrants, had their children here—even those people would not have rights of citizenship today.

It is such a ludicrous concept, but it is being proposed and being taken up by many of those who are against any continued immigration to this country and is being made to be the hallmark of the campaign against this whole issue of citizenship by birth.

I think it is involved in this issue and that is why I bring it up here, because some would dismiss the argument of the separation of families saying, well, these children don't have a right to be here.

Also, our immigration law does not recognize the right to be here until they are age 21. In effect, they cannot petition for their parents even though they are American born. They cannot until they reach the age of majority. This is also something that should be looked at, but this is not the appropriate committee.

But we are very concerned about the separation of families, the deleterious effects are manifold and it is something that prompts us to bring ourselves here to make this kind of testimony.

We, at the same time, realize there may be few people affected by it, but even if one family is affected adversely in this way, it is something we should not tolerate in our society.

Mr. Roybal. Thank you, Mr. Chairman.

Chairman Gonzalez. Thank you.

You are certainly right, Monsignor. Also, there is an array, almost a host of corollary manifestations as a result of all of this mood. In Arizona, you have paramilitary vigilantes patrolling the border, arresting what they consider to be illegals.

To what extent the newly constituted authorities consider that, we don't know. In my area, we have roundups right in the shadow of San Fernando Cathedral invading what in some countries are considered sanctuaries.

Also, in the State of Arizona we have the recent court sentencing of men of God, like yourself, who were actually providing sanctuary to refugees.

But the President also signed a national security directive 2 years ago this spring, followed by two Executive orders, that in a time of exculpation, say acts of terrorism, all of these illegals would be considered suspect and armed with the implementation through the National Security Advisory, which is still very secure because it comes under the disclosure penalties of the Executive order of last year, May 1, 1985, so that it is possible to have the military called in through the FEMA, the Federal Emergency Management Agency, all through these directives that are in place as powers that the Congress delegated as far back as the Espionage Act of 1917.

The experience with attempts to enforce these acts show clearly that the thrust or the animus is directed to the alien, the foreigner, the suspect that is automatically suspected, because he is foreign or foreign looking.

So, I want to thank you very much for your time and your representation of the Catholic National Conference and also for the great work that you are doing and have done in this area.

We thank you for your time, Monsignor. We know you are under some pressure to return to your area. Thank you very much.

Chairman GONZALEZ. Mrs. Dolbeare, let me say how happy we are to see you. We have missed you very much since your self-imposed exile or retirement, but we, fortunately, from time to time, see that you are far from retired, and we are glad.

Your contributions have been great. They have been many over the course of the years, and particularly in this area of housing for the poor.

So, thank you very much for being with us.

STATEMENT OF CUSHING DOLBEARE, FOUNDER, NATIONAL LOW-INCOME HOUSING COALITION

Mrs. DOLBEARE. Thank you very much, Mr. Chairman, and Mr. Roybal, too. It is always a privilege to appear before either one of your committees. This is the first time I have had the privilege of appearing before both of you together.

I want to try to be brief, because there has been excellent testimony this morning and it is abundantly clear that both the two of you and the other members of the committee understand the issues extremely well. So, there is little point in my being repetitive. I wish I had Mr. Popolizio's eloquence on these issues. I think they are deeply important.

I first became aware of the potential impact of this HUD regulation, or the requirements in the 1981 act, early in 1982 when I went down to Laredo, TX, to visit one of our board members and the chairman of our affiliate organization, the Low-Income Housing Information Service.

In the course of that visit, I met with a group of tenants of the Laredo Housing Authority. I happened to mention, without really thinking of the impact, that there was this new provision in the 1981 law that was going to require that people document their status and that, as far as I understood, it applied to very member of the family.

I have never on any occasion ever said anything to any group of people that caused so much consternation. It was just appalling. Of course, the more questions, the worse it got.

Older people said they couldn't possibly document their status. Others said their husbands couldn't document their status, and so on—the full gamut.

My impression was that for a vast majority of the people in that room the imposition of this requirement would have placed their housing security in jeopardy at a time when, as we all know, other housing choices were virtually unavailable to low-income people.

So, when I got back to Washington, I started working with the coalition to see if something couldn't be done about this. Of course, the proposal in H.R. 1, grandfathered in existing subsidized housing families, and would have dealt with it.

I didn't spend much time over here, frankly, because it has been my experience, particularly in the last several years, that there is no problem in getting the House to accept anything good that the Senate will do. It is usually the other way around. The House does good things and it is a little hard for the Senate to see their wisdom.

So, I began to work on the Senate side and we worked very closely with the staff over there, and they worked with HUD, and the result was that the Senate bill in 1983 contained a provision—which was not as satisfactory to us, as a matter of fact, as the provision that the House recently put in H.R. 1, but which would have helped a lot, because it would have exempted situations where the head of the household or a majority of the children could document their status. Some version of that, as you know, was almost enacted in 1983.

It is clear from the legislative history that Congress really did not intend to put the requirement in the law and have it interpreted as HUD is now interpreting it.

If additional evidence were needed, it is the House action in June on H.R. 1 which had bipartisan support.

I think it is critical that this committee insist through whatever vehicle you can, either with the House Judiciary Committee or as a floor amendment when the immigration bill comes up, that the provisions in this bill conform to the provisions in H.R. 1.

I had the opportunity to review the text of the amendment which is under consideration, and I find that it is inadequate because it only, as I read it, includes half of the H.R. 1 provision. It would apply to H.R. 3810, the exemption for families or individuals 62 or over.

But it does not deal with the equally pressing problem of what we are calling mixed families—families where one or more of the members are citizens or eligible residents, but others may not be able to establish their eligibility.

It is absolutely critical that both of those provisions be added to H.R. 3810.

There are some statistics in my prepared testimony, the best that I could find. Statistics in this area are not very good, but I thought what was available was a little bit better than nothing.

I think it is reasonable to take the number of Hispanic occupants of subsidized housing as a relative proxy for the number of people that might be affected on this.

INS uses a rule of thumb in that 90 percent of their apprehensions are Mexican. A substantial portion of the remaining 10 percent are also from Latin America and are Spanish speaking.

If you look at the number of Hispanic households in subsidized housing as revealed by the 1983 annual housing survey, you are looking at less than 1 percent of the renter households in the United States.

So, we are talking—in terms of the SAVE requirement in H.R. 3810—of tacking on to a totally inadequate bureaucratic procedure and set of files over in the Immigration and Naturalization Service—which I happen to know something about from my other consulting activities, but which other witnesses are going to cover far better than I could—but we are talking about tacking on to that this complicated series of administrative requirements that has just been described by the New York City Housing Authority.

We are talking about applying it not only to present residents of subsidized housing, not only to people who are going to be admitted to subsidized housing, but to everybody who applies for subsidized housing.

For everybody who gets into subsidized housing, there are probably 10 to a dozen people who will never get into subsidized housing. They will be checked out simply because they have applied and they have just gotten their name on the waiting list.

Now, I appreciate the work which Congressman Frank who is a member of this committee, has put in on trying to make the requirements on SAVE that are in H.R. 3810 as fair and as effective as possible. But it is a serious mistake even to think about applying SAVE to the housing programs.

It would be better if the SAVE provisions were discretionary than if they were obligatory, but there is no point to it. You are talking about as I said, less than 1 percent of the renter households in the United States that would ever be caught into this system. You are talking about doing this version for a substantial number of people, for whom it is academic at best and, at worst, subjects them to the possibility—because although the information is supposed to be confidential, who knows whether it will be or not—of placing their own security and status in some jeopardy even if they are legal.

There are many, many instances of INS apprehending and deporting people who are legally here, including American citizens.

Finally, and the crowning irony to me, anybody who happens to be in subsidized housing now who cannot comply with these provisions is already covered under every version of legalization that is contained in any of the bills that Congress has considered on immigration over the last several years.

So what would happen if this provision as it is now before you is adopted? You would eventually have a law which says on the one hand: "Here you have been in the country since 1980 or 1981 or 1982. You have been on the waiting list for 6 years to get in anyway. So you are eligible to apply for legal status because you have been here this long and because you have a fixed residence and so forth. But, on the other hand, we are sorry. You cannot stay in assisted housing any more because you don't comply with that part of the provisions.

It is insane. It really is.

I am delighted that these committees are focusing on this issue and we would be glad to be of whatever assistance we can when it comes to the floor and through the conference.

Thank you very much.

[The prepared statement of Ms. Dolbeare can be found in the appendix.]

Chairman GONZALEZ. Thank you, and we want to thank you for your prepared written text that was submitted to us. We had a chance to examine it which as usual is very, very studied, measured and a great contribution to the testimony. It always has been since you have before our subcommittee that I can recall.

Actually, I don't have any specific questions because you removed any possibility of my even volunteering. You have been at the scene of the crime so to speak. You have seen firsthand the border as it really is, and actual conditions that exist well within our border into areas such as my area that is 154 miles from the border itself.

The Frank amendment was what we were trying to get without demanding sequential referral, a voluntary excision on his part. He explained that he was compelled to do this in order to compromise and obtain the acceptance of the other portion of the amendments he offered which were contained in H.R. 3810. We deeply appreciate the help you have given us. Your skilled representative capacity has been amply demonstrated on our House side and I am sure you are as effective on the Senate side.

I might add a PS, that is anything you can do to help the Senate enact an authorization bill would be the answer to all of this and also to such things as the——

Ms. **Dolbeare**. We are doing the best we can.

Chairman **Gonzalez**. Thank you very much.

Mr. Roybal.

Mr. **Roybal**. Thank you, Mr. Chairman.

I was interested in what you had to say with respect to the 1983 annual housing survey. You estimated there were a total of 166,000 families, householders of Spanish origin living in subsidized housing.

You went on to say that that is just 5 percent of all households.

Does that mean that the survey shows that only 5 percent of the residents in subsidized housing have Spanish surnames?

Ms. **Dolbeare**. No, sir, it is 5 percent of all Hispanic households who are living in subsidized housing. Renters.

Mr. **Roybal**. That means 95 percent of Spanish households do not live in subsidized housing.

Ms. **Dolbeare**. That is right, that is without regard to income but as you know better than I, a disproportionate number of Hispanic households are also low income.

Mr. **Roybal**. Do we have any estimate of the percentage of dwellings occupied by Spanish speaking people?

Ms. **Dolbeare**. In subsidized?

Mr. **Roybal**. Is there such a survey?

Ms. **Dolbeare**. Yes, yes. If I had my calculator with me, I think we could calculate it from the information in my testimony. It is 166,000 out of 3,379,000, so it is a little less than 5 percent.

Mr. **Roybal**. The percentage is small, isn't it?

Ms. **Dolbeare**. Very small. Smaller than it should be.

Mr. **Roybal**. I think we have those figures somewhere. I remember reading them someplace, but I have just forgotten at the moment where it was I got that information.

Now, has the study been conducted to determine how many people are living in subsidized housing in States that border the Canadian border?

Ms. **Dolbeare**. I believe HUD used to compile figures that show the number of subsidized housing units in each State. HUD has not published a statistical yearbook since 1979, so those would be the last published figures. Not in relation to this but in relation to something else, I called one of the people at HUD who was best on statistical information 1 year or so ago, said:

> Look, you haven't put out a yearbook since 1979, but could you at least give me some of the relevant tables you used to publish so we will have some of this information.

The person said:

> I could probably send you what we have as tables, but, frankly, the capacity of our information gathering system has deteriorated so much that you would probably get better information if you simply projected the 1979 figures through the current year than if you tried to get updated information.

So the answer is that some of that information as of 1979 is available but I doubt very much that there is any accurate recent information available. I certainly have not seen it.

Mr. ROYBAL. So we really don't know, do we?

Ms. DOLBEARE. No, we don't.

Mr. ROYBAL. Thank you very much.

Chairman GONZALEZ. Thank you again, Ms. Dolbeare. It was very good seeing you.

Ms. DOLBEARE. My pleasure. Thank you.

Chairman GONZALEZ. Our last panel consists of Ms. Alicia Smith, Staff Director of the Committee on Human Resources, National Governors Association; Mr. Robert A. Williams, attorney, Florida Rural Legal Services; Mr. Gil Carrasco, chairman of the Legal Issues Committee, Hispanic National Bar Association; Mr. Charles Kamasaki, director of policy analysis, National Council of La Raza.

I have been informed Ms. Smith, that you have a time problem. If there is no objection from the other members of the panel, we will recognize Ms. Smith first so we can go ahead and have her testimony and ask her questions and then excuse her.

STATEMENT OF ALICIA SMITH, STAFF DIRECTOR, COMMITTEE ON HUMAN RESOURCES, NATIONAL GOVERNORS ASSOCIATION

Ms. SMITH. Thank you, Mr. Chairman.

It is a pleasure to be here today to share with you some of the concerns on behalf of the Nation's Governors about the SAVE project. I would like to begin by thanking you, Mr. Chairman, Mr. Gonzalez, for all of the efforts that you and your committee have made on behalf of preserving the CSBG Program, and also for providing housing assistance to moderate- and low-income people. And to you, Mr. Roybal, for all the efforts in behalf of your committee for our elderly citizens, an area for which the Governors have a great deal of concern and some expertise.

We appreciate your efforts.

As you know, Mr. Chairman, the Governors don't normally administer housing programs. They are generally administered by local jurisdictions. In the cases where the community is so small that the formation of a public housing authority is inappropriate and it is often administered then through a State agency. So while we don't have a lot of specific experience in the administration of housing programs we have some experience with the SAVE project and it is that experience that I would like to share with you briefly today.

We have submitted a full statement for the record so I will just summarize in an attempt to reiterate what has been said.

I will just briefly go through some five issues that we would like to share with you.

Chairman GONZALEZ. Without objection, your prepared text will be inserted in the record at this point and you may proceed as you wish.

Ms. SMITH. Thank you.

The States share the Federal Government's concern that ineligible applicants for any program not receive benefits that have been appropriated for eligible recipients and in fact many States, three States in particular who have large numbers of resident aliens have been interested and have tried to implement these SAVE projects, Florida, Illinois, and Colorado do have statewide experience with the SAVE verification system, and given the fact that you have both executive summaries from your own staff and from INS on the nature of the SAVE system, I won't bore you by going into details of it. But you know that the States are required to make a verification check for people coming in to apply for a range of income security and housing programs.

Our initial experience with the SAVE implementation pilot projects has brought to light five basic issues which I would like to share with you, and the first one is one that you have heard about several times already this morning and that is just the problem of timely and complete data in the system.

By INS's own calculations, they are some 6 million records short, that is records that have not yet been entered into the index system. The backlog seems to be increasing in an average rate of about 1.4 million files a year. Now there is one very good reason for that and that is the problems INS has had with completing the automation of their systems.

They have as you have already been told this morning, problems with their contracting process which caused them to cancel all of the contracts and start to process over again and it looks now like there would be at least 1 year's delay in computerizing the INS records for the more than 40 million people who fall under INS supervision.

The second issue which I would like to call to your attention is that the incomplete report on the eligibility status of certain resident aliens—the INS system uses the A number to identify resident aliens although there are a number of aliens who are in this country legally who do not have A numbers, and therefore would not appear in the INS system.

There are some 16 categories of people who are in this country with legal status under the PRUCOL or permanent resident under color of law designation, who don't have A numbers. So they would never even show up in the INS system, although they are legally here as aliens.

There are some court cases and since I am sitting on a panel full of lawyers I guess I will leave to them to share with you the nature of those cases, but there is a problem there of course with the basis of the INS system.

The third issue is just the questionable cost savings estimates. INS has estimated the project SAVE would result in savings of some $11 billion. That is not a small number. However, that estimate is based on the assumption that aliens participated in entitlement programs at rates equal to their proportion in the entire United States population.

If you use that assumption and INS has done that, they conclude that about 2.5 percent of the applicants for Federal entitlement programs are illegal aliens. If that conclusion were true, 60 percent of the INS estimated illegal aliens would be receiving entitlement programs.

Our experiences with these programs tell us something quite different. For instance, as was already mentioned this morning, in Florida where they have implemented the SAVE project on a pilot basis for the Unemployment Compensation program, they have found that only two-tenths of a percent of the people coming in for unemployment compensation are in fact illegal aliens. The New York State pilot project which also is piloting in the unemployment compensation area, found that only one-tenth of a percent of the cases sent to INS for verification were considered to be problem cases.

So out of a total of $1 billion paid in compensation in the State of New York to all claimants, only $51,000 was paid to illegal aliens.

In Colorado which is employing the SAVE project not only for unemployment compensation programs but for the array of income security programs as well, Colorado reported that out of a total of 147,000 alien applicants for those programs in the year 1985, only 17 aliens were found to be illegal.

So the cost to the State of administering that verification system is about $10,500 a year, and the savings was about $3,000.

CBO has estimated that the cost-benefit analysis provided by INS is pretty questionable and we would certainly echo that concern.

The fourth issue is the cost-effectiveness of the system, particularly for States that have small illegal populations. The Census Bureau projects that undocumented alien populations to be in 1980 about 2.5 to 3.5 million people, and they further indicate that of that population, about 81 percent of them are residing in only 5 States: California, New York, Texas, Illinois, and Florida.

So there are serious questions for the Wyomings and Montanas, and Nevadas, and States with relatively small populations as to the cost-benefit of requiring such a system in those States.

And the fifth issue which I would raise with you is simply the State vulnerability to litigation. Through the fine work of Mr. Frank in the Judiciary Committee, we have now some protection for liability against incorrect eligibility determinations made against States based on incorrect information they get from INS, but there are a whole array of potential problems with litigation that concern the States, and my colleague from Florida will describe one of those cases to you in greater detail so I won't steal his thunder.

In short, Mr. Roybal, and Mr. Gonzalez, I would suggest that the Governors have offered two options as possible ways to deal with this problem, and one would simply be to vest in those secretaries who have jurisdiction over the various programs which are touched by the mandate of the SAVE project, that they have some waiver authority so that if they make a determination that either a State has a verification system already in place which seems to be quite adequate, or that the benefits that would accrue from implementing a system would not begin to equal the cost of implementing the system, that they might permit the States to waive the mandatory requirement, and as I am sure you are aware, that is a provision that four other committees who have received this bill in sequential referral have adopted.

The second suggestion that we have made is simply that GAO be asked to do a careful study to look at among other things, at the cost-benefit analysis of implementing the SAVE system on a mandated basis across the States.

We, at the Governors Association, certainly would stand ready to work with your committees, both to answer questions and to be helpful in gathering any information you might like to have as you continue your deliberations.

Thank you.

[The perpared statement of Ms. Smith can be found in the appendix.]

Chairman GONZALEZ. Well, thank you very much, and please convey our appreciation to the Governors from the committee.

Also I do want to admit that it was your testimony that alerted me to the waiver provisions in the other sections that have been referred to, the Labor and Education Committee, the Energy Committee, and Ways and Means, and it had really been my hope that I could convince my colleague who also is a member of the Subcommittee on Housing, to withdraw his mandatory language in his amendment to the immigration bill. That would go a long way toward helping us.

I just want to thank you for an excellent presentation and for informing us. I don't have any questions.

Mr. Roybal.

Mr. ROYBAL. No questions.

Chairman GONZALEZ. So, thank you very much, and you are free now and thank you for your patience and for going through the lunch period.

Ms. SMITH. Thank you.

Chairman GONZALEZ. To the remaining witnesses, let me apologize again. We have a roll call notice. Those bells indicate that we have a recorded quorum call and we have to go to the floor. I don't think it is followed by a vote or an amendment. So we should be back in 10 minutes and if there is no vote expected immediately after the roll call, then we will recess no more than 10 minutes; if there is, then it will probably be 15 minutes. We ask your indulgence and forgiveness, but it is just one of those days in which the House is legislatively very active.

[Recess.]

Chairman GONZALEZ. The subcommittee will please resume. Once again, let me apologize profusely. I know that you have been exposed to these processes perhaps more than the case of a citizen that doesn't come up here too often. It might make some sense that you should have known that it would take that long to go get a vote. But actually, as you know, sometimes we ourselves don't know for sure. All we had known was that we had a quorum call.

The reason for that was they were about to vote on the override of the President's veto on the trade bill. But what wasn't announced was how much time was available for debate on both sides. So I was told by the parliamentarian, just to give you an idea, that it would be no more than 12 minutes. So I assumed that was the total time but it actually was only what one side had.

Of course both sides decided to use their full time. Then there was an alternative to just wait because there was always a hope they wouldn't use all that time. So that is the reason we have been out, because we didn't finally get the vote until then. So I wasn't out eating lunch or anything. I apologize for causing you all to go right through your lunch period and waiting here.

Is there any special request on the part of any one of you three that might have a time problem? If there is no objection, then what we will do is recognize, in the order that we listed, Mr. Williams first.

Thank you for accepting our invitation.

STATEMENT OF ROBERT A. WILLIAMS, ATTORNEY, FLORIDA RURAL LEGAL SERVICES

Mr. **Williams**. Thank you for inviting me to testify before this committee. My name is Robert Williams. I am an attorney employed by Florida Rural Legal Services in Immokalee, FL. I am currently representing hundreds of Haitian immigrants who were improperly denied unemployment benefits because of the SAVE program in a class suit which is pending in the U.S. District Court in Miami. I would like to share with you today the background of that lawsuit and what lessons can be learned from the Florida experience which may be useful in considering the expansion of the SAVE program as proposed in the pending legislation.

The SAVE program was initiated in Florida in the fall of 1984 following a meeting between Governor Graham and Commissioner Nelson. Florida authorities were assured by the INS that the program would save millions of dollars. The main focus of SAVE in Florida was to be the unemployment compensation system administered by the Florida Department of Labor and Employment Security.

As I am sure you are aware, Florida has an unusually large number of aliens who have legal status but who are not permanent residents. There are approximately 30,000 Cubans who have not applied for adjustment and 20,000 Haitians who are in the category of Cuban/Haitian entrants. In many cases, their I-94 entry document does not show current work authorization, although INS acknowledges that all Cuban/Haitian entrants have current work authorization.

In addition, there are about 1,800 Haitians who were released from detention as a result of Judge Spellman's decision in *Jean* v. *Nelson* and are in valid parole status.

There are also about 12,000 Haitians who entered the United States between October 10, 1980, and June 29, 1982, who were paroled into the United States so that they might apply for political asylum. They also were issued I-94's showing employment authorization.

None of these individuals' current immigration status is shown by the INS computer. If you check their alien number through the computer, the computer screen directs you to initiate "secondary verification." "Secondary verification" means that a caseworker photocopies the document presented by the alien and sends it to the INS in Miami where an INS employee attempts to locate the alien's file and prepares a written determination.

It was being sold to Florida as an automated system, but actually, in Florida, the experience was that 50 percent of all alien verifications were done through a manual system.

By the fall of 1984, the program was well underway. Almost immediately its effects were felt in the Haitian community. All Haitian claims were referred for secondary verification. Although some Haitian claimants displayed I-94's that showed valid work authorization, INS told the State they were not authorized to work. When the State subsequently determined that the individuals were actually authorized to work, the INS told the State that it felt that the work authorizations had been improperly granted, but in the future it would revoke the work authorizations before informing the State that the individual did not have work authorization.

Thus, a program which was supposed to identify illegal aliens was redirected to deny benefits to persons who were in fact eligible for benefits on the day that they applied. When Haitians were referred for secondary verification the INS sent them a letter revoking their work authorizations immediately. This procedure was contrary to INS's own rules which provide that prior to revocation, the INS must give 15 days' notice of intent to revoke and an opportunity for the alien to present reasons why his work authorization should not be revoked. INS subsequently admitted to State authorities that the revocations did not comply with its own regulations but decided to continue the practice because it was more convenient for the agencies.

In this way, hundreds if not thousands of Haitians were disqualified for benefits. Others were disqualified simply because INS could not find their files. Many files have been lost in the Miami district. When these individuals applied for benefits, instead of admitting that the file was lost, the INS informed the State that it had no record of the individual and that he was not employment authorized. In one case, a Haitian went to INS, showed them his I-94, obtained a written verification of his status from an immigration officer, which he then gave to the State authorizes who sent it back to INS and still INS responded they had no record of the individual and he was not work authorized.

In January 1985 a freeze severely damaged crops throughout Florida and President Reagan issued a disaster declaration. Thousands of farmworkers, including many Haitians were unemployed. The INS saw this as its big opportunity to prove the value of the SAVE program. They estimated that the Disaster Assistance Program would run to $40 million and projected that the savings due to the SAVE program would be between $10 and $20 million. INS hoped that this would be "the final blow in bringing the heads of the various entitlement agencies in the State of Florida, who to date, [had] been reluctant to cooperate with the Immigration Service, around to their side of the table."

As with most of its estimates, the projected $10 to $20 million savings was grossly inaccurate. In fact, the final INS memorandum on the Disaster Program estimated that the savings were about $103,000 and that only about 3.6 percent of the aliens checked were found ineligible. It now appears that most of those disqualifies were Haitians whose work authorizations were illegally revoked.

The Haitians found they had little administrative recourse. There is no administrative appeal from the decision of the district director to revoke work authorizations. Dozens of appeals were filed with the Division of Unemployment; however, the Florida Department of Labor's position was that the INS's determinations could not be challenged in an unemployment compensation appeal.

On April 15, 1986, a Florida court ruled that where "INS denies or revokes an alien's work authorization effectively rendering him ineligible for Government benefits to which he may otherwise be entitled, even if the action is unlawful, the INS determination is binding on the States and can be assailed only before a Federal agency or in Federal court." Shortly thereafter, we filed our action in the Federal district court.

That litigation is still pending; however, the Government has acknowledged that the work authorizations were improperly revoked and is attempting to reinstate the work authorizations retroactively. Unfortunately, the INS now says that it cannot identify all the people whose work authorizations were improperly revoked. To date, approximately 660 work authorizations have been reinstated. That is the way INS handles it. They walked away from it. They said "We made a mistake. We will give them back the work authorizations." But that leaves the State with the burden of reopening hundreds of unemployment cases and redetermining these claims. It is very likely that many of those who were wrongfully denied because of the information provided by the INS will never receive the benefits to which they were entitled.

What is the final balance sheet on SAVE in Florida? During the period for which we have records from October 1985 through May 1986, over 200,000 people filed claims for unemployment compensation in Florida. A total of 456 were disqualified for unemployment benefits because of alien status.

It is our understanding that of the 456, 348 were disqualified because INS improperly revoked their work authorization leaving the number actually disqualified as 107, or less than 05 percent of the total number of claimants. Even this overstates the savings, since at least 55 of those determinations did not result from INS data but were based on the claimant's admission or other information received by the Department of Labor. So perhaps this program has been successful in identifying 60 people who were ineligible for benefits.

What were the costs? The costs to the State were substantial. $119,000 were budgeted for the first year of operation. More than 75 percent of this was for labor costs. One assumes that the INS had similar costs. Not counted are the hours wasted by appeals referees, the Unemployment Appeals Commission, and the District Court of Appeals in reviewing these cases or the costs and attorneys fees of the present litigation.

Of course, the greatest costs were incurred by the hundreds of Haitian claimants who were denied unemployment compensation at the time when they most needed it. It is hard to put price on being evicted or going hungry or not being able to afford medicine for one's children. Moreover, the entire Haitian community has become hesitant to file for unemployment benefits even though they may be entitled to them. Widespread local publicity and the grapevine have created fears that filing a claim for benefits could result in revocation of employment authorization or other adverse action by INS.

In evaluating the program about 3 months before we filed our suit, Commissioner Nelson said he felt the Miami district office had done a superb job in implementing SAVE in Florida and that the Florida program was a model program that would convince the other States to follow suit and join the SAVE Program. I don't see where anyone can look at the experience in Florida and conclude that this program was anything but an abysmal failure. The potential for abuse inherent in the SAVE Program should be evident.

Low-level INS officials are put under pressures from their superiors to generate savings which may not actually exist. We understand the district offices of the INS have all been given quotas to come up with SAVE entitlement savings by denying benefits to aliens. The people whose claims are being reviewed are new immigrants who may be unfamiliar with their rights under the various benefit programs and afraid to challenge the INS.

The INS determinations are generally nonreviewable while the Government entitlement agencies accept the word of INS as conclusive proof of an alien's status. Moreover, INS officials are not held accountable if the information they furnish is erroneous. These problems are only compounded when the aliens affected belong to a group such as the Haitians in south Florida who have repeatedly bent the victims of discriminatory conduct by INS in the past.

If the INS is to continue to implement Project SAVE, then I think it essential that statutory safeguards be enacted to prevent a repetition of what occurred in Florida.

First of all, Congress should require that any alien verification system be implemented in a manner that provides for verification of immigration status without regard to sex, color, race, religion or national origin.

Second, Congress should insist that the alien verification system not be used by INS for administrative, noncriminal immigration enforcement purposes.

The Privacy Act would give some aliens the opportunity to correct some of these records the INS is relying on, and would further require steps be taken to insure the SAVE Program data is current and accurate for its intended use. We have discussed with the INS the possibility of correctly showing the correct number of Cuban/Haitian entrants in Florida on their computer, showing they are in fact work authorized and entitled to these benefits. The INS says it's a good idea but they don't have the manpower to put the information on the computer from the individual's file.

Of course, in the end, the person who pays for that lack of manpower is the alien whose legitimate claim for benefits is delayed or denied because the information isn't on the computer.

Finally, I would join in the recommendation of all here today that the SAVE Program should be optional with various agencies. Clearly, there are significant differences in the extent to which various entitlement programs are being utilized by aliens and there are significant differences from State to State. In view of the significant costs of the program and concerns about the way in which it has operated to date, I think each agency should be allowed to evaluate the costs and benefits of participation for itself.

That concludes my prepared testimony.

[The prepared statement of Mr. Williams can be found in the appendix:]

Chairman GONZALEZ. Thank you very much for a most valuable and informative testimony as well as your recommendations and the suggested amendment that you appended to your testimony. We deeply appreciate that. It is most helpful.

Mr. Carrasco.

STATEMENT OF GILBERT PAUL CARRASCO, CHAIRMAN OF THE LEGAL ISSUES COMMITTEE, HISPANIC NATIONAL BAR ASSOCIATION

Mr. CARRASCO. On behalf of the Hispanic National Bar Association, I would like to thank you for the opportunity to present our views on H.R. 3810, the Immigration Control and Legalization Amendments Act of 1985. The Hispanic National Bar Association is a national organization that was originally established in 1972 as La Raza National Lawyers Association. It is organized into seven regions and has thousands of lawyers who are members of the organization in 31 different States.

I have served as chair of the legal issues committee of that organization since 1982. I would like to review briefly our general position on the bill as a whole, then focus on the SAVE amendment generally and then address the specific aspects of SAVE that relate to housing.

First, the bill as a whole. Although there are aspects of this legislation that we embrace, we do not believe that the positive elements outweigh the harm that would result if the bill were enacted into law. For those who would be legalized under this legislation, we agree that is the appropriate legislative response to the issue of the undocumented in this country. However, in presenting the position of the Civil Rights and Civil Divisions of the U.S. Department of Justice, in 1980 I presented a memorandum on the employer sanctions proposal to the Select Commission on Immigration and Refugee Policy Task Force on Work Eligibility.

That position, which I believe holds true today, maintains that the predictable inefficacy of employer sanctions would mean that "our immigration policy would not see any improvement and would in fact, foster the many societal problems generally attributable to irremediable poverty without any possibility of sustenance from either the private or public sector. Concomitant problems of poverty such as starvation, disease and crime could result." If consensus emerges, however, that some version of this legislation must be enacted, we recommend that it include at a minimum equitable legalization, strong protections against discrimination and exploitation, and a 2-year sunset provision.

Turning to the systematic alien verification for entitlements proposal, this amendment is, in our opinion, an unwise measure on three grounds.

First, it would foster unnecessary and potentially abusive interrogation and involvement of employees of State and local agencies and private landlords in the implementation of public benefit programs.

Second, it would sanction undue reliance on information systems of the INS that are not sufficiently accurate or current, thereby jeopardizing the provision of public benefits to those who are lawfully entitled to receive them.

Third, access and use of information that was acquired and collated for particular purposes, but which is now proposed to be shared between agencies of the Federal Government and with agencies of State and local governments for expanded purposes, necessarily implicates rights of privacy. First, with respect to SAVE, there are substantial problems of discrimination. We have a system here of deputizing private employers in the employer sanctions provision of the bill, which is similar, and State and local agencies and private landlords to oversee the implementation of aspects of immigration law.

We believe that inquiries beyond a request to sign applications under penalty of perjury by such employees of State and local agencies, and private landlords, are likely to lead to discriminatory application and would result in a request for such documents from U.S. citizen minority applicants for benefits, even though the amendment does not require it for citizens and nationals.

I found it interesting that Assistant Secretary May of the Department of Housing and Urban Development responded to Congressman Torres' question about remedies for discrimination against foreign born and other persons who perhaps are foreign looking. Mr. May suggested that that discrimination would be covered under Title VIII, the Fair Housing Act of 1968. In contrasting the way title VIII has been interpreted with the way Title VII of the Civil Rights Act of 1964 has been interpreted, that would be an extension of the concept of national origin discrimination relief as it has applied in the context of employment.

Congressman Torres' inquiry addressed problems of discrimination against people on the basis of alienage; that is, people of all different nationalities other than the United States. As title VII has been interpreted by the U.S. Supreme Court in the *Espinoza* v. *Farah* decision, national origin is covered by title VII, but discrimination on the basis of alienage is not. So, unless there is an expansive interpretation of title VIII, in accordance with Mr. May's suggestion, the discrimination that Congressman Torres inquired about would not be covered.

If such discrimination did ensue, it is not clear that even with Mr. Rodino's nondiscrimination amendment a private right of action exists, and it is not clear whether a remedy exists for violation of that provision.

Turning now to the unreliability of Immigration and Naturalization Service data, I think it is very well known to those who practice immigration law and other lawyers who practice in the area of immigrants' rights that INS data are extremely unreliable. Indeed, the House Committee on Government Operations in its October 17, 1980, report entitled "Immigration and Naturalization Service

Records Management Problems," made several very important findings, and I quote at page 4 of that report:

> INS is not answering its mail as quickly as it should partly because of poor use of form letters, partly because of poorly trained employees.
>
> INSs manual handling of records is a clear case of the organizational lefthand's not knowing generally what the righthand is doing, particularly because the few directives for recordkeeping are not enforced.
>
> INS is all too indulgent in allowing district offices to delay responding to the biweekly circular for missing files, if indeed the offices respond at all.
>
> For years, INS has neglected its manual recordkeeping and has continued to do so even more to its detriment during its recent attempts to automate records.
>
> Computers are useful tools in recordkeeping. But in its rush to automate, INS put tracking systems on line without sufficient planning for the amount of work that they would be called upon to perform.
>
> Improvements in recordkeeping that are attributed to automation may in fact result from additional staffing, such as a 150-percent increase in the Houston district office's records room, and evaluations must clearly distinguish between the two.

So, we have an analysis conducted by the House of Representatives that has concluded, I think fairly comprehensively, that the INS has historically fallen far short in its recordkeeping obligations. The situation in 1980 has not really changed. As directing attorney of the National Center for Immigrants' Rights in Los Angeles, last year I was lead counsel in a nationwide class action which established various rights of due process of law for immigrant children.

In the course of that litigation, which is styled *Perez-Funes* v. *INS*, and reported at 619 F. Supp. 656, we sought certain information from the INS with respect to members of the plaintiff class. The defendants, INS, submitted a very curious declaration in response to our discovery request, and that declaration was signed by one Mr. Harlin M. Keister, Jr., who was then Chief of the Index System Section of the INS Office of Information Systems. The declaration signed under penalty of perjury and dated March 18, 1985, declares, and I quote:

> Even if the Government were to modify the program to retrieve this type of information, the data generated by such would be erroneous and misleading. William J. Polli, Chief, Records Operations Section, Records Management Branch, INS, has informed me that there are currently 6.2 million records that have not been entered into the system. This backlog has been increasing steadily since 1979. Even with his personnel attempting to key in the current information, along with a small amount of the backlog, they are unable to keep pace with the current records which are received at a rate of approximately 1.4 million per year. Therefore, even if the program were modified, there is no timeframe which contains complete records and any search would yield inaccurate statistics.

Now, as testimony has demonstrated earlier today, the experience with the SAVE Program in the pilot projects has been that the INS does have poor data and that it has not been cost-effective, the primary objective of the program. As an example of that problem with the SAVE Program, The commissioner of the Washington State Employment Security Department, in a letter to Congressman Chandler dated February 24, 1986, stated, and I quote:

> Based on my department's experience with the SAVE concept, I am compelled to point out that there are significant problems with the timeliness and completeness of INS available information and that the costs of the system, appear to far outweigh the benefits.

Mr. Popolizio of the New York City Housing Authority referred to the statement of the commissioner of labor for the State of New York, Lillian Roberts, in her February 7, 1986, letter. In referring to various shortcomings of the SAVE Program, in that memorandum, he did not refer to her statements indicating that the INS computer files in Washington are unreliable. Also he did not refer to her statements that many of the political refugees from Cuba, Hungary, Poland, and other countries were not in the computer files at all.

The commissioner of labor also indicates that the files in Washington of the INS did not show records of some individuals who were admitted over 30 years ago. So, we have instances of people who are fully entitled to be here and yet who are not reflected as such, according to INS data available. There is another statement that Commissioner Roberts made in her letter that I think is particularly important for these committees to consider. She states, and I quote:

> There was a great deal of trauma created among aliens legally admitted to the United States when they were advised of the data reported by INS in Washington. Many claimants were frightened and became quite upset. This had a further unsettling effect on operations in the local office.

For many lawful permanent resident aliens who have gone through the process and have waited perhaps 7, 8, 9, 10 years in some cases to legalize their status, one can imagine the tremendous concern that would result if suddenly they were told that they were not here in the country legally. I think that the emotional distress that could result from the errors in INS data need to be considered very thoroughly because the problems that would arise as a matter of legal liability and as a matter of simple human concern would be very substantial.

Another concern that we have with the SAVE Program generally is the very substantial incursion on the right of privacy that would ensue as a result of the program. Early on in the consideration of immigration legislation back in the days of the Select Commission, a national identification system or identification card was considered as an option in determining the legal status of those in this country. I think it was widely accepted that such a process and such a system in this country, a free nation, would be inconsistent with our historical value placed on individual liberties.

In the Justice Department memorandum to which I referred earlier, in addition to the legal objections that were raised with respect to employer sanctions, the national identification system was also addressed. The Civil Rights Division voiced its concern at that time that:

> Because employment relationships under a work eligibility system would entail the collation of permanent data by the Government with potential expansion of the type of data requested and purposes for which they are used, objections based on the fundamental constitutional rights of privacy, liberty, and association may arise. These rights jeopardized in this context find their locus primarily in the first and ninth amendments.

So, the privacy concerns arise in a similar context in the SAVE Program because of the exchange of information, both intergovernmentally, that is between the Federal Government and State and local governments, and intragovernmentally, within the Federal

Government itself, in terms of indexing and verification of personal information.

In 1977, Congress established the Privacy Protection Study Commission, which issued a report in that year and which stated at page 617:

> Actual or potential information abuses are much more likely to result from continuing growth in the Government's appetite for information about individuals and in the use of that information for growing numbers and types of purposes. The real danger is the gradual erosion of individual liberties through the automation, integration, and interconnection of many small, separate recordkeeping systems, each of which alone may seem innocuous, even benevolent, and wholly justifiable.
>
> Dramatic developments in computer and communications technology, which both facilitate recordkeeping functions previously performed manually and provide the impetus and means to devise new ones, can only exacerbate this problem.

Although Congressman Rodino has offered an amendment that provides that SAVE "shall not be used by the Immigration and Naturalization Service for administrative, noncriminal, immigration enforcement purposes," given the previous problems with maintenance of information by the INS that we have reviewed, it does not seem clear that INS would take adequate measures to segregate information obtained through the SAVE Program from its enforcement information data base.

Furthermore, it is not at all clear that the immigration enforcement amendment of Mr. Rodino——

Chairman **Gonzalez**. Mr. Carrasco, pardon me once again. We have a recorded vote and it's on an amendment. It also reminds me to say that Chairman Roybal didn't come back because he is handling the bill on appropriations for State Treasury, and other agencies, and therefore he is on the floor and wanted me to communicate that fact to you. We will recess for about 10 minutes.

[Recess.]

Chairman **Gonzalez**. Well, thank you once again. This time I hit it right. I just stayed there and got the immediate vote on the amendment as amended.

So, Mr. Carrasco, you may proceed. Pardon the interruption.

Mr. **Carrasco**. Thank you, Mr. Chairman.

I am pleased we didn't lose you for long that time.

I was referring to Mr. Rodino's amendment that would prohibit the INS from using SAVE for immigration enforcement purposes, and it does not appear clear at all to me that any remedy exists for a violation of that provision, or that any private right of action would be available to someone who suffered harm as a result of a violation of that provision.

So, it seems to me that if the subcommittee wanted to make that enforceable, it would have to address those two issues.

In terms of the other problems with SAVE, one of the primary problems results from the recognition by the State and local agencies that implement public benefits programs of aliens who reside here under color of law. That has been interpreted by the courts as a term of art and has resulted in several people about whom INS has information in obtaining benefits. And if the INS is asked, through the secondary screening mechanism under the SAVE amendment, to verify whether their immigration status is satisfactory, I think that we would have a problematic situation where certain individuals are recognized presently as eligible for public benefits under these programs.

But, when INS is asked to verify their status, they would be denied eligibility on the basis of the view that INS would take of their situation, refusing to recognize them as permanently residing under color of law. In other words, that particular State under the immigration laws has been recognized by several courts; but the INS would not view that favorably. And, when requested to verify a person's immigration status, the INS would likely take the view that they are not in a satisfactory immigration status.

In terms of the SAVE Program generally, I must agree with Senator Simpson, who has shepherded this legislation through over the several years that it has been considered, and his assessment was that it is not at all clear at this point in time whether all the States need it, whether the technology is actually efficient enough to implement it, and whether the privacy issues have been resolved.

So, in that way, Senator Simpson, at least as of September last year, concluded that he would vote against the amendment and would resist attempts to pass it.

Turning to our particular concerns relating to housing, I have been attorney of record, along with several other lawyers in California, in the challenge to the HUD regulations that were recently supposed to have gone into effect, and which appear at 51 Federal Register 11198, and at this point in time the U.S. Department of Housing and Urban Development has determined that those regulations should be postponed so that Congress can address these issues further.

We have challenged that regulation on several grounds, and we feel that the basis for challenge of those regulations would apply similarly to the SAVE amendment in terms of its denial of housing assistance to families with undocumented members in them.

To the extent that the statute that is supposed to be implemented by those regulations provides that undocumented persons should be denied housing assistance, that does not mean, in our view, that the assistance should be denied to eligible citizens in households. So, I think it is a matter of inconsistency of the regulations and the statute in terms of there being available public housing assistance to all those who are citizens; and yet, the Department of Housing and Urban Development is intent on denying assistance solely on the basis that some of those U.S. citizens are related by birth and live with undocumented members of the household.

This also implicates the right of privacy, and that right has been recognized in the case of *Moore* v. *City of East Cleveland*, the U.S. Supreme Court case decided in 1977, in which the court recognized that that city's attempt to regulate the size of the family and relations of a family in terms of zoning and location of residents was unconstitutional as a violation of substantive due process.

So, in our view, the right of privacy is very seriously implicated when the Department of Housing and Urban Development, and other agencies, would attempt to restrict the ability of people to obtain housing assistance or retain housing assistance on the basis of their relationship with undocumented members in the household.

As has been pointed out earlier, there are also substantial problems for the aged in terms of the ability of the elderly to obtain documentation. This would implicate the rights of people who are lawful permanent residents most directly who have been here for many years, but yet have lost or misplaced their documents and could not evidence their legal immigration status.

In conclusion, we would strongly recommend that the SAVE proposals under consideration be rejected. Amendments to the SAVE Program recognize potential problems of discrimination and use of data for immigration law enforcement, but the protections included in the amendments are inadequate for those purposes.

The INS has a long and continuing history of mismanagement of records, and any system that would rely on them for determinations that impact so directly on the necessities of survival is very likely to impact adversely on deserving eligible applicants for public benefits. Moreover, fundamental rights of privacy, property, and liberty would be seriously compromised through such a system.

We recommend that the Systematic Alien Verification for Entitlements Program be abandoned. I would request, Mr. Chairman, that the prepared statement, along with the letter attached to it stating our general position on immigration legislation, be included in the record.

I would be happy to answer any questions you may have.

Chairman **Gonzalez**. So ordered. Your prepared testimony plus the letter will be inserted in the record.

We want to thank you for submitting that in time for us to review that and study it.

[The prepared statement and letter of Mr. Carrasco can be found in the appendix.]

Chairman **Gonzalez**. We will proceed and hear our third, remaining witness, Mr. Kamasaki.

We also thank him for having submitted a prepared text of his testimony ahead of time.

STATEMENT OF CHARLES KAMASAKI, DIRECTOR OF POLICY ANALYSIS, NATIONAL COUNCIL OF LA RAZA

Mr. **Kamasaki**. Thank you, Mr. Chairman.

For the record, I am Charles Kamasaki, Director of policy analysis for the National Council of La Raza.

Given the lateness of the hour, I request the full text of my statement be entered into the record, and that I be allowed to summarize.

Chairman **Gonzalez**. So ordered.

Mr. **Kamasaki**. Thank you.

First of all, I would like to express the council's appreciation to both Chairman Gonzalez and Chairman Roybal for giving us the opportunity to present our views on an issue of great importance to the Hispanic community—the Systematic Alien Verification for Entitlements, SAVE, provisions of the Immigration Control and Legalization Amendments Act of 1985, H.R. 3810. Both Chairman Gonzalez and Chairman Roybal are intimately familiar with the problems posed by alien verification proposals such as SAVE and the regulations recently issued by the Department of Housing and Urban Development.

We greatly appreciate the efforts of both Mr. Gonzalez and Mr. Roybal in removing the most onerous aspects of the HUD regulations during House consideration of H.R. 1, and look forward to working closely with you to ensure that the protections included in the House bill are enacted into law.

As you know, the National Council opposes those provisions of H.R. 3810 which would mandate nationwide implementation of SAVE for four reasons:

First, the system has not been adequately tested. No hearings on the program have been held by the Judiciary Committee. Freestanding legislation, introduced last year by Representative Thomas Petri, which would also mandate nationwide implementation, has not received a single hearing. In fact, this is the first congressional hearing which has focused exclusively or primarily on the SAVE Program.

Second, INS data systems upon which SAVE relies are incomplete and inaccurate, as documented by many of the previous witnesses.

Third, the system is not cost effective. Again, the previous witnesses have substantiated this point. Nationwide implementation of SAVE risks damaging individuals. For example, an early GAO audit of a California SAVE prototype system found that:

> * * * out of a total of 136 aliens who were denied * * * benefits, after a search by INS of local records in California, 50 were later determined * * * to be legal, 5 illegal, and 81 with no record * * *.

A review of SAVE operations in Chicago resulting from a court order revealed that, out of 600 cases where aliens referred to the INS for status verification did not appear at the INS district office, 62, or roughly 10 percent, were in fact legally eligible for benefits.

In addition, SAVE appears in some cases to deter eligible aliens from receiving benefits to which they are legally entitled. This deterrence occurs for a number of reasons. There is an unfortunate legacy of mistrust between Hispanic and other ethnic communities and the INS. It is in no way surprising that a recent legal immigrant, when asked by an AFDC claimstaker to "go to the INS because there might be a problem with your status," might misunderstand, fearing deportation, and choose to avoid contact. In another important example, undocumented parents may fear applying for benefits for their citizen children, who are undeniably eligible.

Beyond these overall objections to SAVE, there are several aspects of the program of special interest to the Banking and Aging Committees.

Assisted housing programs differ in several critical respects from many of the other programs covered by SAVE. First, housing is not, despite the best efforts of Chairman Gonzalez, an entitlement, and there is a critical shortage of affordable housing available to low-income persons.

Second, eligibility for housing assistance is—with some exceptions—determined on a family or household basis, rather than an individual basis.

Third, unlike virtually every other program covered by SAVE, a significant proportion of housing programs are administered by nongovernmental entities, including private landlords, and private nonprofit or for-profit sponsors of housing developments.

In addition, as you are aware, under regulations recently issued by HUD, assisted housing programs are already covered by an alien verification system not dissimilar from SAVE. These differences have several important implications for the Banking Committee in its consideration of the SAVE Program.

The presumptive release provisions of H.R. 3810 need to be modified to ensure that eligible families for housing do not lose their place in line—either by virtue of being evicted from existing units or being removed from waiting lists—for assisted housing.

Since there is currently no fair hearing process for applicants denied assistance by private owners or operators of some assisted housing programs, a formal appeal process should be adopted to implement the intent of the Frank protections.

Given that mixed households, that is, those that include both documented and undocumented persons, would be adversely affected by SAVE, explicit protections for citizen and legal resident aliens in such households should be adopted. Perhaps language similar to the Roybal amendment to H.R. 1, which provides that a household is to be considered eligible if one or more of its members are eligible, could be adopted. Another alternative would provide for a pro rata provision of benefits based on the number of eligible persons within a given household.

The fact that a significant proportion of assisted housing is administered by private entities raises the potential for discrimination against citizens and legal permanent resident aliens who fit immigrant stereotypes. In this respect, the SAVE Program and the HUD regulations are analogous to employer sanctions, in that we believe that at least some private landlords may play it safe and refuse to rent units to persons who appear foreign.

As Chairman Roybal is well aware, during House consideration of the Simpson-Mazzoli bill in 1984, the Los Angeles Times documented examples of employers firing or refusing to hire persons they suspected of being undocumented, even though the legislation had not been passed. The same article, which Mr. Roybal entered into the Congressional Record, cited an example of a private landlord in Dallas, TX, who wrote to his tenants that he suspected were undocumented and asked them to leave his apartments. There would be little or no protection against this kind of discrimination under H.R. 3810.

In addition, one of our major concerns with the SAVE Program is the deterrent or chilling effect it is likely to have on those persons eligible for benefits. Neither the discrimination problem nor the deterrent effect of SAVE would be ameliorated by the protections currently in H.R. 3810 or the proposed modifications listed above.

Furthermore, it is estimated that about 40 percent of the occupants of assisted housing are elderly or handicapped, or both. We share the concern that the SAVE Program will impose severe hardships on elderly persons of Hispanic descent, for a number of reasons. Many elderly immigrants would have special difficulties in proving their legal status because:

They are the most likely group to be either monolingual in their native language or lack full English proficiency, and thus they may not fully understand their rights and obligations under the SAVE Program;

They are likely to have great difficulty in securing documents or proving their status if they do not appear in the initial computer check. Although SAVE provides for a secondary verification through manual searches of files, it is likely that pre-1960 INS records are the least accurate and most difficult to verify;

Finally, these persons, by definition, have low incomes. They have few resources for transportation to INS or another area to obtain their documents, and if denied assistance have little probability of obtaining decent alternative housing.

We believe that a number of measures can be instituted to address—if not eliminate—the special hardships faced by the elderly. First, HUD should provide some type of counseling assistance to those who may not fully understand the verification requirements. Second, the Select Committee on Aging should consider a study of the special problems faced by the elderly in complying with SAVE, with recommendations to the Congress on how these can best be ameliorated.

With respect to the problem of discrimination by private landlords, we suggest that the Banking Committee provide some form of redress for victims. In addition, we believe that HUD should carry out an education campaign directed at private owners and operators of assisted housing to attempt to minimize any confusion regarding their responsibilities in order to minimize the potential for discrimination.

Finally, the National Council believes that it is essential that the implementation of SAVE for housing assistance programs should be made optional. We suggest that the Banking Committee should support an amendment along the lines of those adopted by the other committees with jurisdiction over SAVE.

For the many reasons stated above, the National Council has opposed provisions of H.R. 3810 which would mandate nationwide implementation of the SAVE Program before careful review and corrections of its inadequacies occur. While we support its purpose, we do not believe that, at this point, this system can be fairly and effectively operated on a nationwide scale.

However, we recognize that some form of the SAVE Program is likely to be included in immigration legislation. We therefore urge you to adopt amendments which would make implementation optional, and that would provide the essential protections described above.

We further recognize the unique situation the Banking Committee faces with respect to SAVE, that is, that HUD already has a verification system in place. Given the uncertainty regarding the outcome of potential legislative changes and legal challenges to the current HUD system, we believe that the safest course at this time is to support proposals which make implementation of SAVE optional.

We pledge to continue to work with both committees in the future to monitor and assess developments in this area, and, if necessary, to seek appropriate legislative or regulatory responses.

Thank you again for the opportunity to present our views, and for your continuing leadership in addressing these important issues.

I will be happy to answer any questions.

[The prepared statement of Mr. Kamasaki can be found in the appendix.]

Chairman **Gonzalez**. I thank you very much, Mr. Kamasaki.

Well, let me say how much I individually appreciate your testimony and your work in this area, particularly in the legal area of activity, and with respect to the Council of La Raza, the general jurisdiction of its operations, that we have been very gratefully aware of.

You recommend that we try to defeat the amendment that is incorporated in the immigration bill, that would mandate SAVE—that is, as far as HUD is concerned—and that in view of the fact that some verification system ultimately will have to be used, your recommendation is that we make the use of SAVE optional. Frankly I believe anything having to do with this kind of verification should stay away completely from INS and use none of its facilities for that whatsoever. I believe that there won't be any argument to say that this information should not be cleared through the FBI dossiers, either, because, quote, unquote, the large presence of criminal behavior among the illegal aliens, which is hard to document, but generally that is the prevalent idea.

In the case of housing, or, for that matter, employment, what is usually overlooked by the person who is not acquainted with the particular group involved, is that there is a tendency that we as a nation to generalize about a group and say, well, everybody in that ethnic or racial group—in the case of the Hispanics, it would be ethnic—in the case of the black—which, incidentally, the Hispanic also embraces, as you well know—the idea is that it is a solid kind of monolithic united homogenous type of mass.

The truth is that it is not. Whether it is employment, jobs, or whether it is housing, the first ones to report an alien would be those descended from that same ethnic stock. You and I know that.

Even before there is an implementation or even the adoption of a law or a rule, you begin to get the effect just by a little preliminary publicity.

This last week and the week before, when I went to the district over the weekend, I had a tenant family calling at home: I went and saw them, and they were saying that their project manager—they live in a public housing project—had been asking them questions, and obviously it was based on the fact that a neighbor with whom they had had an altercation had reported them as possible aliens, and he was going to demand documentation; but they had read in the newspaper where I had been quoted as saying that that was not going to be done. Therefore, they were asking if they were standing within their rights in having refused the manager. They were in fear they would be thrown out because they had refused to cooperate with the manager to that extent.

So, just even this little flurry of announcements, which in my district had sustained publicity for about 10 days in a row after the HUD Secretary announced his "pronunciamento" that all these illegals ought to be kicked out—"Kick them all out" was the headline. I feel that any use of SAVE, and particularly in HUD-related activities or subsidized programs, is abhorrent. It is just something I would not recommend, and I am going to try to fight to the extent that I can.

I have this SAVE Program executive summary here. I think that we had earlier asked that it be placed in the hearing record. This is the reason why I wouldn't even want to use SAVE as an option given to any of the Federal agencies.

Doesn't the State agency participating in SAVE act as a trap to identify and apprehend illegal aliens? The answer they gave is, Immigration Service priorities and limited INS resources preclude the use of SAVE as a snare to detect the presence of illegal aliens.

Well, that, on its face, is a bold lie. We know that they will use anything, and they will respond on some of the most effervescent form of testimonial, information, leaks or reports. We have seen in these collective raids on places of employment or even in the shadow of the church, like San Fernando Cathedral in my district, where a poor man was arrested after coming out of the prayer hall without a chance to do anything. He was handcuffed and put in jail.

As it turned out, we had several cases, some of them brought to my attention, and fortunately handled by the civil rights lawyers, where they were actually not aliens at all. They had been born in the United States. They just picked them up and summarily sent them back.

Just 2 years ago, or a little less, I was very sorely disappointed with some of our Spanish-speaking agencies, such as the Mexican-American Legal Defense, because we had a Federal Judge who happened to be a Mexican descendant, appointed by this administration, and had on his own released four aliens who had been in the county jail for no less than 10 months—one of them had even been there 1 year and 3 months. They were charged with no crime. They were being held as material witnesses in the Western Judicial District in some other case. Day after day, week after week, month after month, they were in the same jail with all classes of criminal offenders.

I was informed by a citizen of Uvalde, TX, which is about 90 miles from San Antonio, that four of these aliens had been released from jail into the custody of a border patrol agent, who in turn took them to a rancher in Uvalde, TX, and put them out to work. All of this was done under the direction of the Federal District Attorney then for the Western District, who is now a Federal District Judge, appointed by Mr. Reagan.

When I received the report, the first thing I did was to make an inquiry as to what the practice currently was. We thought that about 18 years ago we had put a stop to that practice of holding alien witnesses indefinitely in a county jail. But, apparently they had revived it; and for how long, I never found out.

Well, fortunately, the presiding district judge had a lot more humanity and compassion than the Federal District Attorney. The

Federal District Attorney's answer was, one, "I am going to do everything I can to save taxpayers money, and the board and meal bills at the county jail to the Federal Government are so great that we ought to let these people work their way." The trouble was that they were farmed out to a rancher that was cheating and exploiting them.

You and I know that even the most servile and humble of the poor eventually lose their patience, and these four had reached the point where they just got up, quit and refused to do a day's work. The rancher immediately called the border patrolman to have them arrested, and he demanded they be deported. But the border patrolman had to return them to the jurisdiction of the District Attorney, who immediately placed them back in jail.

When I finally got an answer from the district judge, his reply was that he agreed that this was a bad practice, he wasn't aware of it, and he wanted to know if I had any knowledge or suggestions since, in my letter, I had explained what we had witnessed 18-20 years ago and what we thought we had put a stop to under prior administrations.

We then supplied him with the rules that were promulgated in the Arizona Federal Judicial District, which were very enlightening. They used an entirely different procedure, though there was the same kind of offense involved in the same type of transactions.

I made a half-dozen suggestions to the presiding judge who accepted them, over the protest of the District Attorney, who I repeat is of Mexican-American descent, who said that it was more costly to take depositions, which is what we were advocating, than it was to keep them in jail for more than a year.

Well, on the face of it, it is preposterous. No knowledgeable attorney would have ever done anything but laughed at that. Yet, they would have gotten away with it.

I discovered that as soon as this was brought to the attention of the judge, the District Attorney had a considerable number of the prisoners. At the time I raised the issue, I went to the county jail and took a head count myself, and you had over 100 of that kind of prisoner—not one charged with a criminal offense. Every one was being held for judicial proceedings, what they call, as material witnesses.

What they did was construct a facility at the Federal penitentiary at Bastrop, TX, where to this day we are holding an untold number of so-called illegals, most of whom, the overwhelming preponderant majority are not charged with having committed any crime whatsoever.

I personally had to bring this matter to the attention of the American Civil Liberties Union lawyers. They did a magnificent job. They followed through and implemented, with the cooperation of the presiding Federal District Judge.

So what I am saying is that we have no notion, unless we have been in the middle of this, of all of the corollary problems that arise in what appears to be a direct simple adoption of a procedure to confront the satisfaction of the requirement that no illegal be eligible for public housing.

I just don't know what, if anything, the National Council of La Raza has by way of joint or cooperative effort with some of the legal defense organizations such as the Mexican-American Legal Defense and Education Fund [MALDEF].

Mr. KAMASAKI. We obviously work closely together from time to time. In this particular case, we are working in coalition with the American Civil Liberties Union and Church World Service immigration arm of the National Council of Churches, in looking at several similar facilities, one which has received substantial publicity in Oakdale, LA. We are looking at a similar facility in Los Fresnos, TX, down in the valley, which we understand there have been similar problems.

But the whole problem of detention of aliens not charged with a crime is a large and growing one.

Chairman GONZALEZ. Thank you.

Mr. Williams, in the Florida case, which I think is a great, great help to us in evaluating the role and the functions of SAVE, is the State of Florida a party, a defendant?

Mr. WILLIAMS. Yes, they are.

Chairman GONZALEZ. When the State agency, clearing through SAVE, received a report that a certain name was considered to be that belonging to an illegal alien, what recourse—in case that individual in effect was not illegally here—was provided? What procedure? What appeal could he have?

Mr. WILLIAMS. Well, in every case you can appeal a denial of unemployment claim. However, what happened was that the appeals referees took the position, which was later upheld by a District Court of Appeals in Florida, that where INS said the status of a person was this; then that Florida unemployment appeals system was not going to secondguess a Federal agency.

The problem is that—and I think it is a problem that people didn't realize before—is that INS's word is not dependable.

Chairman GONZALEZ. That is right.

Mr. WILLIAMS. I saw a case from up here in Virginia where an audit was being done on some unemployment cases, on a Cuban-Haitian entrant who had drawn unemployment benefits. The auditor was going to check with INS. And they called INS up, and a person at INS over the phone said this man is an illegal alien.

On the basis of that phone call, that person was charged with an overpayment of over $1,000 and ordered to pay it back. He could have been charged with fraud, unemployment compensation fraud, and in fact the man was a Cuban-Haitian entrant, and he was not an illegal at all. It was just a cavalier, spur of the moment statement by an INS officer that triggered a whole set of problems for this person, who now has to straighten something like that out. You have to write a lot of letters and talk to a lot of people.

I think that illustrates the whole problem.

Chairman GONZALEZ. The reason I asked you that is because of your experience from Florida—Mr. Carrasco's statement clearly stated that INS SAVE source information was an unappealable fiat. There was no recourse for the individual involved to say, well, this is an error. There was no way to show up the INS as having committed an error. It is considered infallible in that respect.

This is what I think is an horrendous aspect of this whole thing.

Mr. WILLIAMS. For example, in the case of Florida, a lot of the people disqualified were those people with their work authorizations illegally revoked. Now there is no appeal with the district director of INS from a decision to revoke work authorization. However, INS was made aware, they knew that the revocations were illegal. In fact, Congressman Lehman from Florida sent one of these cases to Commissioner Nelson and said would you review this case and it was reviewed by Mr. Inman who is the general counsel for INS, and they said we see no problem in what was done. They didn't see the problem until the day after the lawsuit was filed, and then they recognized that there indeed was a problem, and it was easy for them then to say "Well, we made a mistake."

It is very hard for an agency, you know, you can think of this, what is going to happen with the housing authorities here? Maybe they will turn people away based on what INS says, maybe they will start eviction proceedings against people and then what will happen when INS says, "Oh, we made a mistake. The person really is a legal person."

These agencies will be stuck with the problem. INS won't have a problem. It is easy for them to say well, we made a mistake. I guess the person was legal after all.

That is one aspect of the problem that is just beginning to surface. We see very clearly in Florida what can happen. We don't have to predict what is going to happen with the SAVE Program if it is implemented in our Nation. We already have several examples from the pilot programs, we have concrete examples of the abuse that will occur and also the fact that this program is not cost-effective.

Mr. KAMASAKI. If I might add, Mr. Chairman, at the same time that these abuses were taking place, INS was in their briefings to us assuring us that this program would not be used for those purposes, and would not be used for enforcement purposes. One of the concerns we have always had and we share your concerns about the Frank amendments and the optional verification system is that really INS is unlike other Federal agencies and we share your concern that even if these protections are adopted, there will continue to be abuses.

Our initial position was that we wanted to strike the SAVE Program from the immigration bill. That doesn't appear to be possible. We are looking at these amendments merely from a damage control point of view.

Chairman GONZALEZ. That is right. That is a good way to put it. Well, I think that also like in many other things, of course, a lot of us, a lot of Americans I think have lost our innocence right after so many things have happened. I think going back to the assassination of President Kennedy and more exactly 10 years later with the defendants of Watergate and all. A lot of things have happened that have marred this image of no possibility of any American invested with authority acting like a jack booted Nazi.

We have known for a long time that worse than that has happened in our part of the country with INS agents. There have been horrendous crimes, but they have been committed against the most helpless of people where they are abandoned, not only here but by both governments, their own native countries and of course, ours that withholds the basic rights that we say belong to any person living within the jurisdiction of the United States.

So that when we are thinking of giving authority or power to agencies, we have got to consider that we are not going to give that to angels. It is possible that we could have the worst of devils administering these laws, and that with all of the limitations of human personality that the chances are it will happen. I know that up here, as you know, out of the 435 Members of the House and 100 Members of the Senate, out of a total of 535 Members of Congress, there are not more than some 30 individuals in the capacity of representation that have a direct or potential representative capacity of these areas in which this problem really is considered to originate.

It makes a task hard in view of the fact that the history of the enactment of immigration legislation has always been with a background of fear. The fear of the orientals in the case of the exclusion laws, and the fear now of the hordes of Hispanics that are going to take over the country.

It is very difficult to them during the course of consideration of amendments to the immigration bill to have a historical and an objective perspective and try to shoot for the resolution of the problem beginning with the assessment of the cause.

If we don't, well, I think we are just thrashing around.

But at this point, we are a very, very infinitesimal minority. It is very difficult to penetrate the level of consciousness, because it is a political kind of jingoistic thing to say that charity begins at home. Why should we deprive our native born citizens of our country in favor of these questionable aliens?

Of course, that isn't the issue.

The issue is in view of the nature of the flow which really occurs in cycles, in which it is very difficult to precisely say when it will happen.

For instance, there is no way that anybody can give even a near ballpark figure as to the number of illegals proceeding across the border from Mexico on any given month, or for that matter, year, because the true nature of that flow is one of ceaseless traveling back and forth.

I voted against the 1965 codification of the immigration laws. I even sent a telegram to President Johnson who was holding it as a show piece of legislation of his administration, and took it to the foot or the base of the Statue of Liberty to sign it.

I sent a telegram to him asking him to veto it because it was the first time that a quota system had been imposed on western hemisphere countries, including the only two nations that destiny and God has said are side by side with ours; that is, Canada and Mexico.

If you look at the record you will see that in August 1965 I was the only one challenging that amendment which was offered on the floor by then Representative McGregor, after the chairman of the Judiciary Committee, Mr. Cellar, had pledged that no such thing would happen because they had resisted it when it was offered in committee.

But on the House floor Mr. Cellar withdrew and practically accepted the amendment, but I got up and got into a loud voiced argumentation with Mr. McGregor.

I just felt that there was no use arguing when I asked him if he then felt that his objective was to place, as he said, on an even keel, on the same level, all of the countries with Mexico and Canada, and he said, "Yes."

I said, "You mean Iceland on the same level as Mexico?"

And he said, "Yes."

Look at the record. It is there. You can't argue against that. That is a state of mind. It seems to me that like civil rights bills, antisegregational questions, people get into a state of mind, and in our part of the country even the history of the designations of the group, either through self-designation or by others, has been a very interesting one.

At the beginning, back when I was growing up, the only acceptable term was "Latin American", anything but "Mexican".

"Hispanic", to this day, I cringe, because it was used for those who came from Mexico, maybe, but were light skinned and blonde and light haired and all, and they said "I am Spanish."

The dominant group had a tendency to accept them. The darker, "swarthy," as they say, skinned Mexican-American suffered no less than the black Texan.

The only thing we ever had going for us—and if we had kept on going the way we were, we would probably have had them—was that we didn't have Jim Crow laws and the blacks did. The reason I said a while ago that, you know, the housing authorities know that they don't have to go in there and act like FBI.

The first ones to report the presence of some illegal will be another neighbor. I just discovered when I filibustered the race bills in the State Senate in 1957 that my worse critics when I came back to San Antonio were the leading then, quote, unquote, "Mexican Americans," lawyers who denounced me and said, "He is crazy. He is putting us on the same level as the black except they didn't use the word 'black'." I was the first man to use the word "black" in the State Senate proceedings. So, at this point, I would just say, there is no appeal process within the INS agency in case of an error in reporting.

Mr. **Williams**. No, that is why I recommended amending the Privacy Act to give a remedy for these groups of aliens here under color of law.

Chairman **Gonzalez**. That is what I was going to ask. It was in your testimony that you pointed out that the Privacy Act was limited to U.S. citizens.

Mr. **Williams**. And permanent residents.

Chairman **Gonzalez**. Yes.

Mr. **Williams**. The problem is the Privacy Act does mandate that Federal agencies that keep a records system to maintain that record system up to date and accurate for the purpose for which it is intended which is not true of the records system being currently maintained by INS.

Also, the Privacy Act provides for a person whose records are in error, where the information in the records is in error, to have an opportunity to correct that record.

What we are having now in Florida is we have these people who are work authorized, who are legal aliens, and they are not shown on the computer as being legal aliens or work authorized, and they would like to be shown on the computer that way because if they are not it means that every time they apply for benefits there is going to be a problem. There will be a delay.

So, we feel that they ought to have a right to say, "I would like my name shown on that computer, and I would like my status shown as a legal alien who is authorized to work."

Chairman **Gonzalez**. Certainly.

Mr. **Williams**. Right now, the INS is telling us, "Well, they say they would like to do it, but we don't have the time to do that. We don't have the man power to put that information on the computer."

I think a person ought to have the right to have the information shown on the computer as accurate.

Chairman **Gonzalez**. Certainly.

You know, in 1940, before the war, I earned a little bit of money—in fact, that is what enabled me to get married at that time—working part-time or what turned out to be temporary employment registering aliens because of the 1940 adoption of the law that mandated the registration of all permanent or legal aliens in the United States.

It was also, I believe, and still is, the law that every alien in the United States with legal status in the United States 18 years and older, must register.

Is that still the law?

Mr. **Williams**. I know it was in the post-war period.

Mr. **Carrasco**. Yes, every time they change their address, but, I believe the requirement that aliens register once a year was repealed in the early 1980's.

Mr. **Williams**. Once a year. It still is once a year?

Mr. **Carrasco**. I do not believe so.

Mr. **Williams**. Is that being enforced?

Mr. **Carrasco**. To the best of my knowledge. I don't think the INS had time to enforce that provision. In fact, part of the problem here is that the INS would have yet another duty to perform when the naturalization backlog is years, and certainly people who are ready to become U.S. citizens are being denied that right, basically because there are too many applicants.

Chairman **Gonzalez**. So that if a citizen was sworn in at the base of the Statue of Liberty when we had that time of celebration there, he wouldn't be on that computer.

Would his name be listed as having become a naturalized American citizen and, therefore, no longer an alien status?

Mr. **Carrasco**. Theoretically, everyone who has ever come into contact with INS should be on the computer. They should be assigned an "A" number and so forth. As the testimony demonstrated, that is not the case.

So, U.S. citizens who were sworn in before the Statue of Liberty were previously lawful residents in most cases and they should be in the computer by virtue of that fact.

Chairman **Gonzalez**. If you were up here, and you know the lay out of the problem, what would be your recommendation as to what we ought to be doing here, you know, like first trying to eliminate completely the mandated requirement of the use of SAVE, or any other suggested amendments?

I wanted to thank you for the amendment, the copy of the amendment that was attached to your statement which I intend to follow through on.

But what other recommendations would all of you have?

Mr. Williams. I think it is really key that the cost effectiveness of this program be evaluated in an honest way.

I think that really what has to happen is someone has to bring INS into this and make them answer questions about whether this program is cost effective or not, and an honest evaluation of this program should be made before it is expanded.

You know, in reviewing the documents that have been furnished to us in discovery, I have found many examples where INS is outrageously padding the saving and benefits achieved by their program.

For example, with respect to unemployment, the State unemployment officials estimate the cost savings as for each person disqualified. They estimate it by taking the average benefit weekly, times the average number of weeks that aliens draw unemployment benefits, and that is a reasonable way of making an estimate.

The INS, on the other hand, take the average weekly benefit amount and multiplies it by 52, and they come up with the difference. The difference is the State's estimate of savings per alien, are about $1,000 per alien; whereas the INS estimate is $5,000 per alien.

Anybody who knows anything about unemployment knows that you can't draw unemployment—there is a 26-week limit on drawing unemployment, so nobody is drawing unemployment for 52 weeks as INS is using to claim savings.

Another example is INS has been ordered to—has been requested by the Social Security Administration to review several thousand cases in which benefits may have been wrongfully denied to aliens as part of the decision in *Berger* v. *Califano.* These are cases where the aliens have been turned down by the agency.

INS is claiming savings for every one of those cases that they review where they find that denial was proper. They are saying that is a savings because of the SAVE Program. I think a careful look would show that much of this savings is illusory.

Chairman Gonzalez. It is our intention to bring INS, sooner or later, before the committee.

I will have to go and register a vote. I apologize for having kept you all through the lunch period and all.

I would close out by thanking you all most sincerely, and we would stand in adjournment until further call of the Chair.

[Whereupon, at 4:05 the committee adjourned subject to the call of the Chair.]

APPENDIX

STATEMENT OF HON. R. GARCIA

I WANT TO THANK BOTH CHAIRMAN GONZALEZ AND CHAIRMAN ROYBAL FOR HOLDING THIS JOINT HEARING. THIS IS AN ISSUE THAT WILL AFFECT MILLIONS OF PEOPLE NATIONWIDE, AND DESERVES THE CONGRESS' CLOSE SCRUTINY.

FIRST LET ME WELCOME THE DISTINGUISHED WITNESSES WHO HAVE KINDLY CONSENTED TO APPEAR BEFORE US AND SHARE THEIR EXPERIENCE AND EXPERTISE. I EXTEND A SPECIAL WELCOME TO MR. POPOLIZIO , CHAIRMAN OF THE NEW YORK CITY HOUSING AUTHORITY.

WE ARE ALL HERE BECAUSE WE ARE CONCERNED WITH HOUSING, AND WITH THE POSSIBLE AND PROBABLE IMPACT OF SAVE ON THE ALREADY DECIMATED ASSISTED HOUSING PROGRAMS.

ONE OF THE MANY CONCERNS I HAVE WITH THIS PROGRAM IS WHERE THE MONEY TO FUND IT WILL COME FROM. THE FEDERAL GOVERNMENT WILL UNDERTAKE TO FUND THIS PROGRAM 100%, BUT WILL THIS BE A NEW APPROPRIATION TO ADD TO THE BURGEONING DEFICIT, OR WILL NEW REDUCTIONS BE REQUIRED TO OFFSET "SUCH SUMS AS MAY BE NECESSARY" TO FUND SAVE. SAVE HAS BEEN TOUTED AS A MONEY SAVING PROGRAM BE CAUSE IT IS DESIGNED TO PROVIDE STATUS INFORMATION TO STATE AND LOCAL ENTITLEMENT AGENCIES TO ENSURE THAT NO INELIGIBLE ALIEN RECEIVES PUBLIC ASSISTANCE BENEFITS. THE INS COMMISSIONER HAS ESTIMATED THE COST SAVINGS AT $11 BILLION, BASED ON AN ASSUMPTION THAT ALIENS ENGAGE IN 'SUBSTANTIAL AMOUNTS OF ENTITLEMENT FRAUD ON ALL MAJOR PUBLIC ASSISTANCE PROGRAMS.' HOWEVER, I FEAR THAT THE VERY PROGRAMS INTENDED TO BENEFIT FROM THESE SAVINGS WILL BE THE ONES FORCED TO BEAR THE COSTS OF IMPLEMENTING SAVE. A PILOT PROGRAM CONDUCTED IN NEW YORK OVER 13 WEEKS FOUND 54 INELIGIBLE ALIENS OUT OF 12,238 FILED CLAIMS. IN HOUSTON, TEXAS A SAMPLING OF 8,000 APPLICANTS FOUND ONLY 42 THAT WERE 'DOUBTFUL.' IN COLORADO, STATEWIDE, 17 INELIGIBLE ALIENS WERE FOUND. THIS MAY BE A SMALL SAMPLING, BUT IT TENDS TO NEGATE THE ASSUMPTION THAT SUBSTANTIAL FRAUD IS BEING PERPETRATED BY INELIGIBLE ALIENS.

THIS PAST JUNE, CHAIRMAN GONZALEZ' HOUSING BILL, H.R. 1 WAS PASSED BY THE HOUSE. UNFORTUNATELY, VARIOUS AMENDMENTS MADE TO THE BILL CURTAIL THE BUILDING OF NEW PUBLIC HOUSING UNITS, AND FUNDING FOR PUBLIC HOUSING AS WE ALL KNOW HAS BEEN SHAMEFULLY REDUCED . YET THE NUMBERS OF PEOPLE REQUIRING HOUSING ASSISTANCE HAS NOT BEEN REDUCED, and in New York the problem grows. Of the 1,900,768 families in renter occupied units in New York City, 1,187,104, or 2/3 of those families are income eligible for public housing, and this number includes 200,000 families that currently populate the waiting list for housing. Not only do we have a waiting list, we have families that are doubled and tripled up because they have nowhere to go. Decent, affordable housing is hard to find and getting harder, and New York is an example of the many scrambling for the few. Which brings me to another concern, and that is the potential denial of benefits to eligible aliens, and to eligible non-aliens. Let me use my district , the Bronx, New York as an example. As of the 1980 census, about 51% of Bronx residents were of Hispanic origin; 35% have 8 years or less of education; we have less than half the national averages of per capita and median income; and the highest percentage (43.2) of people with income below the poverty level. SAVE would tend to have a chilling effect on people who are poor, have little education, or do not speak the language sufficiently to understand the rules and regulations, and who would probably be intimidated by the process. The INS' data base is not perfect, and it has been said that it is seriously flawed, the list of names to be added backlogged. How can an imperfect system be expected to perfect the current flaws in entitlement programs. We all know that Puerto Ricans are citizens of the United States, whether they live on the mainland or on the island. Yet, I have lost track of the times I have been asked if a passport is required to go to Puerto Rico. An overnight mail carrier even required that a customs form be filled out when shipping a package to San Juan. Perceptions are sometimes hard to correct; if the IRS can think that New Mexico is a foreign country, the INS is not immune from this kind of unintentional error. If we want to improve the lives of eligible aliens why not put the SAVE money into housing, and make sure that children do not go hungry and are well educated. There are many and better uses for the funds that SAVE might require. The programs currently using these funds need them more and use them to a better purpose.

Given my concerns with this program, I would prefer to see the SAVE provisions deleted from H.R. 3810, the Immigration Bill. However, as support for this program is strong, I would recommend that the Education and Labor Committee amendments strengthening the hearing process for those initially denied benefits and reserving oversight of the program to Congressional committees of jurisdiction be adopted. Only through such amendments can Congress ensure that no eligible person is negligently or unfairly denied benefits to which he or she is legitimately entitled.

Statement of
Congressman Esteban E. Torres
Before the
Subcommittee on Housing and Community Development
Committee on Banking, Finance and Urban Affairs
and
Select Committee on Aging
on
The Immigation Control and Legalization Amendments Act
H.R. 3810

August 6, 1986

I want to thank Chairman Gonzalez and Chairman Roybal for conducting this hearing. I also want to thank the witnesses for taking time out of their busy schedules to appear before us today.

Congress has grappled with immigration reform for the past six years. During that time, countless hearings have been held and virtually every immigration issue has been extensively debated. But today's hearing will examine a new and largely untested program that would affect millions of people throughout the country.

The Judiciary Committee has reported a bill, H.R. 3810, which would mandate the nationwide implementation of an alien verification program known as SAVE. The bill would require every noncitizen in the United States applying for federal benefits to verify their immigration status with the Immigration and Naturalization Service.

I am told that SAVE is needed because thousands of illegal immigrants are using scarce federal benefits, to the detriment of American citizens and legal immigrants. I am told that this program will save the federal government billions of dollars. And I am told that SAVE is fair to those undergoing verification, and cost-effective to administer.

Yet, what do we really know about SAVE. Have Congressional hearings been held to determine the impact of the program? Are in-depth analyses of SAVE operations available for Congressional review? Unfortunately, answer to these question is no.

The objectives of SAVE are basically sound. It is difficult to argue against preventing ineligible applicants from receiving scarce public resources. In addition, the potential savings to the federal government are significant.

But there are several important questions that must be answered about SAVE before requiring nationwide implementation. Initial reports show that data "gaps" and other problems inherent in the current SAVE system have led to wrongful denial of benefits. SAVE also poses questions regarding due process, right to privacy, and public health.

There are three basic tests to determine sound public policy: 1) Is the policy needed; 2) Does the policy work; and 3) Does the policy create more problems that is solves. Before Congress mandates the nationwide implementation of the SAVE program, I think it would be prudent to determine if it meet these basic tests. I hope this hearing will help us make such a determination.

AUGUST 6, 1986

Systematic Alien Verification for Entitlements (SAVE) Program in H.R. 3810, the Immigration Bill

The SAVE program was initiated by the Immigration and Naturalization Service (INS) as a pilot program in early 1984 to determine the eligibility of noncitizen applicants for entitlement programs through computer checks of INS automated file systems. H.R. 3810, the Immigration bill, as reported by the Judiciary Committee, would require HUD, and other federal agencies, to participate in the SAVE program by October 1, 1988, in order to verify with I.N.S. that applicants seeking federal assistance are eligible aliens.

Under the bill, individuals who are not citizens or U. S. nationals would be required to present alien registration documentation or other documents indicating satisfactory immigration status. This information would be turned over to INS for verification through their SAVE computer system. Under the current SAVE system , if the alien does not have a satisfactory " A number", which indicates a legal alien status, a secondary verification involving a manual records check occurs. The bill does provide a person with a reasonable opportunity to submit satisfactory immigration status evidence and presumes program eligibility until a determination is made. The bill provides that the Secretary shall deny or terminate financial assistance if an individual is found not be in a satisfactory immigration status and provides an applicable fair hearing process after that determination is made.

The bill would apply to several housing programs covered under the alien eligibility provisions of Sec. 214 of the 1980 Housing Act including public housing, Sec. 8 Existing Certificate, Sec. 236 Rental Housing Assistance, Sec. 235 Low-Income Homeownership and the Sec. 202 Elderly and Handicapped Housing programs. Under the bill, HUD tenants and prospective applicants would be required to certify their citizenship or legal alien status; however, HUD would be required to verify with INS the status of each alien. Unlike other federal agencies, federal housing assistance is primariy distributed through over 3,000 individual public housing authorities and thousands of private owners and non-profit sponsors.

The SAVE program has a rather limited experience, through programs conducted in California, Illinois, Colorado, Texas, Florida, and New York, and has several major systematic problems and flaws. The National Council of LaRaza reports that the INS computerized data bases have missing files, information has been entered incorrectly and certain types of eligible aliens have not been included in the INS data systems. The National Governors Association and a number of federal agencies, including the Department of Housing and Urban Development, support providing those agencies with the discretion to develop alternative verification procedures.

THE SAVE PROGRAM

Executive Summary

The Systematic Alien Verification for Entitlements (SAVE) is an intergovernmental, federal-state information-sharing initiative developed by the Immigration and Naturalization Service (INS) to prevent benefits to illegal aliens or aliens otherwise unentitled to benefits because of immigration status. SAVE is recognized as a cost effective means to preserve the integrity of entitlement programs. The program is based on sound principles of public management and is non-discriminatory. SAVE is applicable to a wide range of benefit programs, including unemployment insurance, food stamps, student grants and loans, low income housing and other subsidies. Successful implementation of SAVE is expected to result in an estimated federal-state cost avoidance of nearly $3 billion dollars annually, and act as a strong deterrent to illegal immigration to the United States.

- The SAVE Program provides participating states with direct automated access to the INS Alien Status Verification Index. When a state employee checks an alien's application and alien registration documentation against the system, the response is made in 3-5 seconds. If the response indicates entitled status and corresponds to the applicant's alien registration documents, no further verification is required. If there is a discrepancy or no record is found, a mail-in secondary verification procedure has been established. This will prevent erroneous denial of benefits.

- SAVE uses an automated match between INS files and non-citizen applicants for benefits, therefore, it is non-discriminatory. SAVE is also consistent with the mandates and provisions of the Immigration and Nationality Act, the Payment Integrity Act of 1985 and the Privacy Act. Legislation which would mandate SAVE has been introduced in this Congressional session and appears to have strong support. Moreover, several states have voluntarily shown great interest in the program. SAVE has also received growing endorsement from several federal agencies, including the Departments of Labor, Health and Human Services, Agriculture, Education, Housing and Urban Development and the Small Business Administration.

Although reporting requirements have not yet been standardized, over $95 million dollars in savings were reported for FY 1984 as a result of alien status verification. The pace for 1985 has nearly doubled as a result of heightened activity and short-term pilots, and is expected to increase dramatically as more states enlist in the program.

For more information on SAVE, contact the SAVE Project Coordinator, USINS, Washington, D.C. (202) 633-3093, or your nearest office of the Immigration and Naturalization Service.

THE PROGRAM

SAVE is an intergovernmental, federal-state information-sharing initiative designed to prevent payment of benefits to illegal aliens or aliens unentitled to benefits because of immigration status. SAVE has enormous cost-avoidance potential in any benefit program where specific immigration status is a criterion for eligibility. Immigration and Naturalization Service (INS) experience has shown that SAVE is especially effective in programs involving unemployment insurance, food stamps, aid to families with dependent children, student grants and loans, low-income housing, small business loans, and other federal and state subsidies.

THE ORIGINS OF SAVE

Verification of alien status before the disbursement of entitlement benefits is not a new concept. In some states, manual verification by INS has been in effect for over a decade. The SAVE Program is essentially unchanged from those activities which in the past had been conducted as a result of INS-state agreements entered into on a local basis. However, now that computer technology has been acquired by both the state and federal sectors, the method of conducting verification checks has improved.

THE SAVE PROCESS

The SAVE Program provides participating agencies with direct automated access into the INS Alien Status Verification Index (ASVI). Although operating procedures for each state agency may vary according to individual need, the general process is simple and consistent: an employee from the state entitlement agency checks an alien's application against the ASVI, via the state's own computer terminal. If the information supplied by the applicant corresponds with the record, a system response is provided in 3-5 seconds. If the response indicates entitled status, **as determined by the state**, the application can be processed without impediment.

If there is a discrepancy between the record and the information presented on the application, the state employee photostats a copy of the applicant's immigration documentation (after personally viewing the original), attaches it to a secondary verification form, and forwards it to the local INS office for review.

That office processes the request, and expeditiously returns it to the submitting agency. Depending on the results of the secondary verification, the state agency either denies or continues to process the application. **No denial of benefits is based solely on the results of the automated check.** Secondary verification requests receive priority attention by INS, and are returned to the agencies within the standard waiting periods for most entitlement programs.

ACCESS AND SAFEGUARDS

Under the SAVE agreement, state agencies have direct access to an INS data base. This access is counter-balanced by several safeguards designed to prevent improper invasions of privacy or breakdown of system integrity. Federal security clearances are required for all state employees with access to the data base. Spot audits by INS of the system and site security are part of the agreement. Finally, the accessed data base itself is a selective one, containing only the information necessary to enable state agencies to make eligibility determinations based on alien status.

STATE AUTONOMY AND SAVE

Under SAVE, the INS simply makes a portion of its data base available to participating states for the purpose of verifying that of bona fide immigration status. States retain full control over their benefit programs. Approval or denial remains a state decision; INS is not informed of individual determinations and conducts no review of decisions. Likewise, states assume no enforcement liability under the SAVE agreement; states do not "turn in" aliens who are found to be out of status. The only reports requested of the states are cumulative numerical accounts which enable the INS to measure the usage of the system and the administrative efficiency of the SAVE Program.

LEGAL BASIS OF SAVE

The Immigration and Nationality Act (INA) mandates the Immigration Service to enforce immigration law and to keep records on aliens in the United States. The "Routine Use" exception to the Privacy Act (Federal Register, Volume 48, Number 221, 15 November 1983, page 51989) permits the disclosure of these records to state agencies for the purpose of verifying eligibility in entitlement programs.

Though not currently mentioned specifically, SAVE is also consistent with the Deficit Reduction Act of 1984. The income and eligibility provisions of that Act mandate the exchange of income-related information among state and federal assistance programs, and the use of that information in determining the amount and eligibility for benefits under state-administered public assistance programs. As outlined in the President's FY 1986 Report to Congress on Management of the U.S. Government, the INS alien status file will be proposed as an additional data base available for matching.

ADVANTAGES OF SAVE

In addition to its significant cost avoidance potential (See "Cost Avoidance Estimates" below), SAVE carries a number of other advantages as well. For the entitled alien applicant, SAVE expedites the application process by confirming entitled immigration status within seconds. For the states, SAVE contributes to good government, assisting state agencies to service eligible applicants for benefits quickly, efficiently, and without discrimination.

By preventing costly payments to those who are ineligible, SAVE helps **ensure** the availability of funds for citizens and aliens who meet eligibility requirements.

For the Federal Government and the INS, SAVE helps remove a major incentive to illegal immigration: the lure of entitlement benefits. (Another major incentive, the availability of jobs, is currently being addressed through proposed employer sanctions legislation and voluntary employer cooperation programs.) Limits on resources make it clear that other tactics are needed to complement a strong border enforcement program; SAVE satisfies a significant part of that need.

COST AVOIDANCE ESTIMATES

There has been no universally accepted method of determining the number of illegal aliens in the U.S., nor of determining their impact on entitlement programs. Nevertheless, INS has made a number of assumptions in estimating the cost avoidance which would result from implementing SAVE in all states for all major entitlement programs (i.e., before public knowledge of SAVE deters the number of applications by illegal aliens):

- Although estimates have ranged from 2 million to 12 million, **INS assumes the presence of 6 million illegal aliens in the U.S.**, a figure which comprises about 2 1/2% of the general population.
- While sufficient evidence is as yet unavailable, it is conservatively assumed that **illegal aliens apply for benefits at the same rate as the population at large.** Although this may be lower in some locations, it appears much higher in others (e.g., 10% in Chicago, 25% in Miami).
- In 1980, approximately $490 billion was paid out in all benefit programs. Of this amount, **$112 billion was paid out in that year for programs which INS recognizes as particularly vulnerable to illegitimate alien claims.** These programs include unemployment insurance, food stamps, aid to families with dependent children, educational grants and loans, low-income housing, small business loans, medicaid, general assistance and other comparable subsidies.

Based on the assumptions above, INS estimates that by removing 2 1/2% of unentitled applicants from the rolls of high risk programs, approximately **$2.8 billion in cost avoidance can be realized through SAVE.** This figure could rise significantly depending on the degree of illegal alien participation found in programs not yet identified as high risk.

ADP COSTS TO STATES

The cost of access to the INS network varies by state, depending upon the number of agencies within the state wishing to access the system, the number of terminals desired, the distance between the state agency facility and the nearest INS telecommunications node, etc. As a general rule, one-time installation costs range between $2,000 - $3,000 and annual operating costs between $20,000 - $30,000. Charges cover the communications line costs, terminals and printers (where applicable), installation of modems, line and communications engine, and security clearances for employees who will access the ASVI. Training is provided by INS. Costs to the state are determined through negotiation between the appropriate state organization and INS, and recorded on a reimbursable agreement made part of the Memorandum of Understanding.

THE MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding constitutes the agreement, made between the Immigration and Naturalization Service and the user agency, by which INS formally permits on-line remote terminal access to its data base. Sometimes accompanied by a signed agreement between the state governor and the Commissioner of the INS, the Memorandum of Understanding is usually signed by the INS Associate Commissioner, Information Systems and a counterpart at the state level. The Memorandum outlines the respective responsibilities of the participating parties as they relate to Privacy Act compliance, system security, pertinent reciprocal agreements, user fees and billing, access limitations, necessary equipment, and related issues. The Memorandum of Understanding is negotiated and drawn upon a formal state request for access to the INS data base.

SAVE EXPERIENCES

Although SAVE is in its beginning stages and reporting requirements have not yet been standardized (resulting in disparate methods of computation), over $95 million in cost avoidance was reported for FY 1984 as a result of alien status verification. As noted above, the pace for 1985 has nearly doubled, and the numbers are expected to increase dramatically as more states, and more programs, engage in SAVE.

During the first year of SAVE, operations have been particularly successful in the states of Illinois and Colorado. Illinois reported a cost avoidance of $53 million for FY 1984 in the unemployment insurance program alone, prompting Governor Thompson to praise SAVE at a December press conference as an "outstanding example of how the states and the Federal Government can work together to assure that tax dollars are used properly...."

Moved by his state's success with SAVE, Colorado Governor Richard Lamm wrote his 49 counterparts across the country and encouraged their participation in the program.

Overall, there are presently 20 states which have signed into agreement, expressed a strong interest in doing so, or are engaged in pilot projects with local INS offices to demonstrate the feasibility of SAVE in their jurisdictions. The geographical and political diversity of the participating states speaks to the effectiveness of a program that balances fiscal responsibility with safeguards against discrimination.

OTHER FEDERAL AGENCY INVOLVEMENT

In the early stages of developing the SAVE Program, INS headquarters learned from its field offices that while several states showed interest in SAVE, their participation was impeded by conflicting federal regulations or interpretive guidance. As a result, INS embarked on a concerted effort to meet with the appropriate federal agencies at several levels in order to gain support for the SAVE Program and assist in revising regulations which would facilitate state participation. The results so far have been encouraging. Extensive briefings and discussions have been conducted with several agencies, with support growing and the attendant regulatory revisions advancing at the Departments of Agriculture, Health and Human Services, Education, Labor, and Housing and Urban Development. Most recently, discussions have been held with the Small Business Administration, which has shown interest in a pilot project in Washington, D.C. As indicated earlier, the Office of Management and Budget (OMB) has expressed its intention to propose legislation which would mandate alien status verification before benefits in several programs are paid. This proposal was drafted by OMB as a direct result of its briefing on SAVE by the INS.

INFORMATION

For more information on SAVE, contact the SAVE Project Coordinator, USINS, Washington, D. C. (202) 633-3093, or your nearest office of the Immigration and Naturalization Service.

FREQUENTLY ASKED QUESTIONS REGARDING SAVE

How does the INS data base "know" if an alien applicant is eligible for a specific benefit?

It is the state agency, not the INS through its data base, which determines eligibility and approves or denies applications for benefits. INS simply provides a portion of the immigration record to the adjudicating agency for use in its eligibility review. INS is not informed of individual determinations and conducts no review of decisions.

What data elements comprise the Alien Status Verification Index (ASVI)?

Information released to the user agency through the ASVI is restricted at this time to alien name, A-file number, date of birth, place of birth, date of entry, place of entry, file control office, and whether the alien has resident status. In the event there is any discrepency with the information on the ASVI, secondary verification is suggested.

How is the computer queried?

When the applicant indicates that he/she is an alien, the system is queried by an alien registration number that appears on all INS-issued documents that authorize employment. The Immigration and Nationality Act requires that "Every alien, eighteen years of age and older, shall at all times carry with him and have in his possession any certificate of alien registration or alien registration receipt card issued to him...." Violation of the provision is a misdemeanor, punishable by fine, imprisonment or both.

What happens if an alien applicant falsely claims citizenship?

Except to provide information as stipulated in the Memorandum of Understanding, INS is not involved in the state's application process. Misrepresentation on an application for benefits is a matter of individual state discretion and is handled through the respective state's screening and audit systems. It is a felony to make a false claim to U.S. citizenship.

Although not directly part of the SAVE program, the INS is actively working with other agencies to locate unentitled aliens who have obtained benefits by making false claims to United States citizenship.

Doesn't the state agency participating in SAVE act as a trap to identify and apprehend illegal aliens?

Immigration Service priorities and limited INS resources preclude the use of SAVE as a snare to detect the presence of illegal aliens. The principal aim of SAVE from the INS perspective is the removal of a major incentive to illegal immigration: the lure of benefits to aliens who are not entitled.

How does a state formally enter into the SAVE agreement?

To participate in SAVE, the state formally requests access to the INS data base on CO Form 373. The agency and INS then execute a mutually acceptable Memorandum of Understanding which outlines the terms of the agreement.

For additional details, contact the SAVE Project Coordinator, USINS, Washington, D. C. (202) 633-3093, or your nearest office of the Immigration and Naturalization Service.

STATEMENT OF STEPHEN MAY
ASSISTANT SECRETARY FOR LEGISLATION
AND CONGRESSIONAL RELATIONS
DEPARTMENT of HOUSING and URBAN DEVELOPMENT

AT JOINT HEARING OF
HOUSE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
and THE SELECT COMMITTEE ON AGING
334 CANNON HOUSE OFFICE BUILDING
August 6, 1986

ON ALIEN VERIFICATION SYSTEM IN H.R. 3810

Messers. Chairmen and Members of the Committees: I am pleased to respond to your invitation to testify at this joint hearing on the impact of a systematic alien verification system on HUD-assisted housing programs.

HUD supports the major objective of Section 121 of HR 3810 as reported by the House Judiciary Committee: namely, the use of INS computer and manual systems to verify eligibility for assistance under HUD-assisted housing programs. Provisions with the same general objective are included in the Administration's proposed amendments to implement a Systematic Alien Verification for Entitlements (SAVE) System. These provisions were submitted by the Department of Justice to the Judiciary Committee on June 10 of this year. We believe, for the reasons discussed below, that the Administration's SAVE amendment is preferable to the SAVE program currently contained in HR 3810.

By way of background, let me briefly summarize the history of alien restrictions with regard to housing programs. It had been the historical position of the Department that alien status could not be made a condition for eligibility in these programs by the Department, and that such restrictions could only be authorized by the Congress.

In 1981, Congress enacted a statute which prohibits HUD from providing financial assistance to aliens not admitted as lawful, permanent residents of the United States. This restriction applies to assistance for tenants in the form of rent supplement payments, Section 236 interest reduction payments or rental assistance payments, Section 8 housing assistance payments and public housing. The prohibition also applies to assistance to homeowners through Section 235 assistance payments.

The statute was modeled on similar statutory restrictions applicable to the food stamp program. The purpose of the restrictions, as stated in the Conference Report, is to "reserve scarce housing assistance resources for persons with the most legitimate claim - namely, citizens and other persons lawfully present in the United States."

This statement of the purpose of the enactment points up a significant difference between housing assistance programs and entitlement programs such as food stamps. In entitlement programs, receipt of benefits by illegal aliens does not reduce the amount of benefits available to citizens and documented aliens. In housing programs, where the total amount of assistance available is limited, the receipt of benefits by an illegal alien serves to deny the receipt of benefits by a citizen or other person lawfully present in the United States.

HUD has issued a regulation to enforce the statutory prohibition mandated by Congress. In designing a system to carry out the statute, HUD has sought to accomplish these goals:

-- That the system be comprehensive and effective.

-- That the system be simply and fairly administered.

-- That the alien restrictions be implemented with maximum uniformity and objectivity.

We believe these objectives are fully reflected in the regulations recently issued by the Department. As previously mentioned, these regulations implement a specific statutory mandate -- to save limited housing assistance resources for citizens and eligible aliens.

As requested by Chairman Gonzalez and other Members of Congress, the Department has deferred the effective date of the final rule from July 30 to September 30, 1986. This provides ample time for Congress to address this issue, or for it to become clear that no amendments will be forthcoming.

The Department believes that use of the INS computerized SAVE system proposed in H.R. 3810 can be a central tool for verification of alien status with regard to HUD-assisted housing programs.

To understand the mechanics of alien status verification in HUD housing programs, it is necessary to recognize first of all that eligibility is determined by many local program administrators. In the Public Housing Program and Section 8 Certificate and Voucher Programs, for example, eligibility is determined by a public housing agency. In project-based rental subsidy programs, such as Section 8 New Construction and Section 236, the project owner selects the tenants and must determine that the tenant family has satisfied federal eligibility requirements. In the Section 235 homeownership program, eligibility is determined by the lender.

HUD does not expect that all of these public housing agencies, and owners and lenders are or should become experts in federal immigration law. That is, of course, the responsibility and expertise of federal immigration authorities.

For practical administration of HUD's new alien eligibility requirements, each adult family member is required to document citizenship or eligible alien status. The documents that can be used to show that a person is a citizen of the United States or is an eligible alien are clearly and precisely listed in HUD's instructions. They include birth or naturalization certificates for citizens and green cards or other INS documents for eligible aliens. The question for the program administrator is simple and straightforward: whether the family has or has not presented the required document.

The key to enforcement of statutory eligibility requirements is assurance that the document presented by a family is what it looks like: that the document is valid evidence of eligible status. Presentation of bogus alien documents is a major threat to the integrity of a system that relies on the submission of documents to show eligibility for assistance.

Because HUD has had no experience in working with the INS SAVE System, it is difficult to be definitive about its potential impact on HUD-assisted housing programs. It appears that the INS computerized system offers a quick and efficient means to verify alien status. We understand from the INS that the SAVE network can be accessed directly by remote computer terminals or by furnishing alien registration numbers to INS for verification from the SAVE data bank. For parties with direct access to the SAVE system, the alien registration number is keyed in by computer terminal. If the number is valid, we are told that computerized verification can be provided in a matter of seconds.

Use of computerized SAVE data for HUD programs should be coupled with the opportunity for a manual check. If there is a discrepancy between the SAVE data and other data provided to the program administrator, INS would be asked to verify, by INS manual record checks, whether the individual is a lawful, permanent resident of the United States.

The Administration's proposed amendment to implement the SAVE system provides that if HUD is advised by INS that an individual is in an immigration status that would render the individual ineligible for financial assistance, HUD will afford the individual the opportunity to prove otherwise. Assistance for the family may not be denied or terminated until the family has been given this opportunity.

In any case, it is important to note that the SAVE system imposes no new or additional burden on applicant and participant families, or upon elderly members of the family.

Messrs Chairmen, your invitation to testify requests HUD's assessment of the advisability of affording a federal agency permission to waive mandatory alien status verification through the INS SAVE system in certain circumstances. The Department believes that HUD and other federal agencies should have administrative discretion to forgo use of the SAVE system when there is an alternative and equally effective and timely system for alien verification, or when use of the SAVE system is not cost effective. For this purpose, HUD supports enactment of the language contained in the Administration's proposed amendment.

Although HUD supports the major aims of the alien verification requirements of Section 121 of HR 3810 as reported by the House Judiciary Committee, the language of the bill raises several significant technical and substantive concerns. We would therefore strongly recommend that the Congress consider the alternative language in the Administration's proposed amendment.

The Administration's amendment would permit HUD to require all adults to document citizenship or eligible alien status in HUD assistance programs. Under Section 121, as reported, if an individual simply declares -- truly or falsely -- that he or she is a citizen of the United States, the individual is not required to submit any documentation to support this claim, and there appears to be no basis on which HUD can require such support beyond the simple declaration.

Also, Section 121 presently requires a two-step verification procedure. If an individual initially fails to produce appropriate documentation of alien status, the Secretary must give a second "reasonable opportunity" to present alien documentation; the documentation must then be transmitted to INS; and assistance may not be terminated until the Secretary has completed the verification with INS.

HUD believes that program administrators should be authorized to deny or terminate assistance when a family fails to present documentation of alien status at the time required. By law, documents that show that an alien was lawfully admitted must be carried on the alien's person at all times. It seems only fair that a person who wants to receive a federal housing subsidy be responsible for timely production of the documents needed to prove that the person is eligible for assistance.

A delay in cutting off assistance for an undocumented alien is a delay in implementing the Congressional decision denying housing assistance for aliens who are not lawful, permanent residents of the United States. Moreover, the delay operates to deny available assistance resources to citizens and legal residents of the United States.

We ask the Committees represented at this hearing to utilize your expertise and experience in developing legislative language that will provide for verification of alien status by use of INS information. For this purpose, we urge adoption of the Administration's proposed amendments to implement the SAVE system.

Thank you for the opportunity to present HUD's views at this hearing. I will be happy to respond to questions.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

10 JUN 1986

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As referenced in our report on H.R. 3810, the Immigration Control and Legalization Amendments Act of 1985, please find enclosed our proposed amendment to implement a Systematic Alien Verification for Entitlements (SAVE) System.

Sincerely,

John R. Bolton

John R. Bolton
Assistant Attorney General

Attachment

VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

Section 1137 of the Social Security Act currently requires States to have in place a system to verify income eligibility for purposes of the AFDC, Medicaid, adult assistance, unemployment compensation, and food stamp programs. Subsection (a) of section ________ would amend section 1137 to require that for these programs plus specified housing and student assistance programs States or other entities have in operation by October 1, 1988, a system to determine whether aliens who apply for or receive benefits under these programs are in an immigration status compatible with the receipt of such benefits.

Under the first amendment, States or other entities would require program applicants to declare whether or not they are citizens of the United States and, if not citizens, to furnish alien registration documentation or such other proof of immigration status furnished to the individual by the INS. States or other entities would then be required to request information from the INS by means of an automated or other system designed for this purpose. If INS furnishes unfavorable information with respect to any individual, the State or other entity would be required to afford the individual the opportunity to submit satisfactory evidence of an eligible immigration status prior to making any decision with respect to the individual's eligibility for benefits.

As is the case with any individual whose claim for benefits is denied, any alien who is denied benefits due to a determination that his immigration status renders him ineligible for program participation would have the opportunity to contest that determination at a hearing in accordance with program practices. The amendment does not create any right to a hearing prior to a denial of benefits.

States also would be required to re-examine the alien status of any non-citizen program recipent whenever any redetermination of the recipient's eligibility is made, and in no case less frequently than annually. Institutes of higher education or other entities responsible for verifying alien eligibility for student aid would follow the verification procedures each time the student applied for assistance, but not more frequently than once per year. The Secretary of Education, in consultation with the Attorney General may promulgate regulations in order to avoid duplicative verification of students applying for assistance from more than one source. Aliens receiving housing assistance would be required to submit evidence of eligible alien status at least annually.

The Secretary of Health and Human Services (or the Secretary of Labor, the Secretary of Agriculture, the Secretary of HUD, or the Secretary of Education, as appropriate), in consultation with the Attorney General may waive the requirement for an alien verification system if the Secretary determines that (a) the State (and appropriate state agency) or other entity or program have in effect an equally effective alternative system for verifying alien eligibility or (b) the costs of administering the verification system exceed the estimated savings.

Subsection (6) adds to the Social Security Act a definition of the term "alien permanently residing in the United States under color of law". This term currently appears as an eligibility criterion in the AFDC and SSI programs, and has been the subject of recent litigation in connection with these two programs. The new definition would specifically enumerate, by means of explicit references to the Immigration and Nationality Act, the categories of aliens who could henceforth be considered as "permanently residing in the United States under color of law".

The new definition would be effective upon enactment. A grandfather clause would exempt from the application of the amendment those "color of law" aliens who, based on applications filed prior to the date of enactment, are eligible for benefits for the month of enactment, for such time as they continuously maintain their eligibility.

A second related amendment provides for the continued eligibility for AFDC benefits of "color of law" aliens eligible for such benefits on the basis of an application filed prior to the enactment of H.R. 3810.

Purpose:

To amend section 121
in its entirety.

AMENDMENT

Proposed by ______________ to H.R. 3810, a bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, viz:

On page 40, strike out line 17 and all that follows through page 53, line 7, and insert the following:

Sec. 121. VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

(a) REQUIRING ALIEN STATUS VERIFICATION SYSTEM.—

(1) UNDER AFDC, MEDICAID, ADULT ASSISTANCE, UNEMPLOYMENT COMPENSATION, AND FOOD STAMPS PROGRAMS.—Section 1137 of the Social Security Act is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(B) by inserting after subsection (a) a new subsection (b) as follows:

"(b) (1) in order to meet the requirements of this section, a State also must have in effect for fiscal years after 1988 an alien status verification system under which—

"(A) the State shall—

"(i) require, as a condition of eligibility for benefits under any applicable program (as defined in paragraph (3)) that each applicant for such benefits (other than an applicant for medical assistance under title XIX whose eligibility for such assistance is determined by the Secretary in accordance with an agreement entered into by the State and the Secretary pursuant to section 1634)—

"(I) declare in writing, under penalty of perjury, whether or not the individual is a citizen of the United States, and

"(II) if not a citizen of the United States, present alien registration documentation or other proof of immigration status furnished to such individual by the Immigration and Naturalization Service, and

"(ii) request from the Immigration and Naturalization Service (by means of an automated or other system design for this purpose) and utilize such information as may be necessary for the State to determine whether an individual who is not a citizen of the United States is in an immigration status that renders the individual ineligible for benefits under such program, and

"(iii) if advised by the Immigration and Naturalization Service that an individual is in an immigration status that renders the individual ineligible for benefits under such program, afford such individual the opportunity to prove otherwise by submitting satisfactory evidence of an immigration status that does not render the individual so ineligible, prior to denial or termination of benefits under such program for this reason.

"(B) the State shall follow the procedures described in clause (i) of subparagraph (A) whenever a reconsideration or redetermination is made of the continued eligibility of a recipient of benefits under an applicable program who is not a citizen of the United States (other than a recipient of medical assistance under title XIX whose continued eligibility for such assistance is determined by the Secretary in accordance with an agreement entered into by the State and the Secretary pursuant to section 1634), and in no case less frequently than annually in the case of such a recipient;

"(C) the State shall have in effect such safeguards as to assure that information received from an individual or the Immigration and Naturalization Service pursuant to subparagraph (A) is made available and and is used only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and is adequately protected against unauthorized disclosure for other purposes; and

"(D) the State shall have in effect laws that—

"(i) authorize the solicitation of written declarations under penalty of perjury, and

"(ii) provide that any individual who, in any declaration required under subparagraph (A)(i), willfully subscribes as true any material matter which he does not believe to be true, is guilty of perjury;

"(2) Notwithstanding paragraph (1) of this subsection, a State (and State agency) shall not be required to have in effect an alien verification system as specified in such paragraph (1) if the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture), in consultation with the Attorney General of the United States, waives, in whole or in part, with respect to such State, any or all of the requirements of paragraph (1). Any waiver under this paragraph shall be made in the form of a determination in writing and signed by the appropriate Secretary. A partial or total waiver shall be awarded under this paragraph only if the appropriate Secretary is satisfied (on the basis of an application for waiver in such form and containing such information and data as such Secretary may require) that:

"(A) the State and appropriate State agency have in effect an alternative system which is as effective and timely for purposes of verifying alien eligibility as the system (or element thereof) which is required by paragraph (1); or

"(B) the costs of administration of such a verification system (or element thereof) in the State exceed the estimated savings in benefit expenditures. A determination by the appropriate Secretary under this subparagraph shall be based upon the appropriate Secretary's estimate of the number of aliens claiming benefits under the applicable program in relation to the total number of claimants under the applicable program in the State, the appropriate Secretary's estimate of savings in benefit expenditures, the appropriate Secretary's estimate of the costs of administration of the alien verification system (or element thereof) in the State, and such other factors as the appropriate Secretary deems relevant to such determination.

"(3) For purposes of this subsection, an "applicable program" is any program identified in subsection (c) unless the Secretary of Health and Human Services (or in the case of the unemployment compensation program, the Secretary of Labor, or in the case of the food stamp program, the Secretary of Agriculture), in consultation with the Attorney General of the United States determines that the program has in effect an alternative system which is as effective for purposes of verifying alien eligibility or that the cost of administering the requirements of paragraph (1) of this subsection would exceed the estimated savings in benefit expenditures.".

(C) in subsection (c) (as redesignated by paragraph (1)(A) of this subsection), by striking out "income verification system" and inserting in lieu thereof "income verification and alien status verification systems"; and

(D) in subsection (a) and subsection (d) (as redesignated by paragraph (1)(A) of this subsection), by striking out "subsection (b)" each place it occurs and inserting in lieu thereof "subsection (c)".

(2) UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM.— Section 1631(e)(1)(B) of such Act is amended —

(A) in the first sentence, by inserting "the requirements of section 1614(a)(1)(B) and other" after "concerning", and

(B) in the last sentence, by striking out "(C)" and inserting the lieu thereof "(d)".

(3) UNDER THE UNEMPLOYMENT COMPENSATION PROGRAM—

(A) Subsection (f) of section 303 of the Social Security Act is amended to read as follows:

"(f)(1) The State and the State agency charged with the administration of the State law shall have in effect an income and eligibility verification system and an alien status verification system which meet the requirements of section 1137 of this Act.

(2) Whenever the Secretary of Labor, after a reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with any of the requirements of this subsection, the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until

the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State."

(B) Subsection (a)(2) of section 304 of the Social Security Act is amended by deleting "or" before "(e)" and inserting ", or (f) " between "(e)" and "of section 303".

(C) In any State in which the Secretary of Labor determines, after consultation with the State or State unemployment compensation agency, that State' legislation is required to effectuate in such State the amendment made by subparagraph (A) of paragraph (3), such amendment shall be a requirement for the States and the States' unemployment compensation laws on or after October 1, 1988, with respect to certification of grant funds under title III of the Social Security Act for any period after September 30, 1988.".

(4) UNDER HOUSING ASSISTANCE PROGRAMS.—Section 214 of the Housing and Community Development Act of 1980 is amended by inserting after subsection (b) a new subsection (c) to read as follows:

"(c)(1) In addition to any other procedures and requirements established by the Secretary of Housing and Urban Development for verification of citizenship or eligible alien status of a person who will receive the benefit of financial assistance as an occupant of an assisted dwelling unit, the Secretary shall have in effect for fiscal years after 1988 an alien status verification system under which—

"(A) each individual who is or will be an occupant of an assisted dwelling unit (other than minor persons as determined by the Secretary) shall:

"(i) declare in writing, under penalty of perjury, whether or not the individual is a citizen of the United States, and "(ii) if not a citizen of the United States, present alien registration documentation or other proof of immigration status furnished to such individual by the Immigration and Naturalization Service.

"(B) The Secretary of Housing and Urban Development shall establish procedures to request from the Immigration and Naturalization Service (by means of an automated or other system design for this purpose) and utilize such information as may be necessary to determine whether an individual who is an alien is in an immigration status that renders the individual ineligible for financial assistance under such program.

"(C) If advised by the Immigration and Naturalization Service that an individual is in an immigration status that would render the individual ineligible for financial assistance under such program, then the Department of Housing and Urban Development shall afford such individual the opportunity to prove otherwise by submitting satisfactory evidence of an immigration status that does not render the individual so ineligible, prior to denial or termination of financial assistance for this reason.

"(2) An alien who is receiving the benefit of financial assistance as an occupant of an assisted dwelling unit shall be required to submit evidence of eligible alien status no less frequently than annually.

"(3) Information received by the Secretary of Housing and Urban Development from an individual or the Immigration and Naturalization Service pursuant to subsection (c)(1) may be released by the Secretary for the following purposes: verification of citizenship or eligible alien status, enforcement of restrictions on the availability of assistance because of such status, investigation or prosecution of fraud in connection with any Federal housing assistance program or other purposes connected with administration of HUD programs.

"(4) The Secretary of Housing and Urban Development shall not be required to implement an alien status verification system pursuant to subsection (c)(1) if the Secretary determines, in consultation with the Attorney General, that the program has in effect an alternative system which is as effective and timely for purposes of verifying alien eligibility or that the cost of administering the requirements of subsection (c)(1) would exceed the estimated savings that may be derived therefrom.".

"(5) UNDER TITLE IV, HIGHER EDUCATION ACT STUDENT ASSISTANCE PROGRAMS.— (A) Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended—

(i) in subsection (a) —

(I) by striking out "and" at the end of paragraph (4);

(II) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon and "and"; and

(III) by adding at the end thereof the following new paragraph:

"(6) be a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien permanently residing in the United States under color of law as defined in section 1101 (a) of the Social Security Act, and comply with any verification procedures required in accordance with section 491 of this Act.".

(B) Part F of title IV of the Higher Education Act of 1965 is amended—

(i) by redesigning section 491 as section 492; and

(ii) by inserting immediately after section 490 the following new section:

"VERIFICATION OF ALIEN STUDENT STATUS"

"SEC. 491.(a) In order to be eligible to participate in any grant, loan, or work assistance program under this title, an institution of higher education or other entity responsible for verifying applicant eligibility shall, for any fiscal year after fiscal year 1988, either—

"(1) have in effect an alien verification system under which such entity shall—

"(A) require, as a condition of eligibility for any grant, grant, loan, or work assistance awarded under this title, that each student applying for such assistance shall—

"(i) declare in writing, under penalty of perjury, whether or not the student is a citizen of the United States; and

"(ii) if not a citizen of the United States, present alien registration documentation or other proof of immigration status furnished to such individual by the Immigration and Naturalization Service;

"(B) request from the Immigration and Naturalization Service (by means of an automated or other system designed for this purpose) and utilize such information as may be necessary for such entity to determine whether a student who is not a citizen of the United States is in an immigration status that renders the student ineligible for assistance under this title, as determined in accordance with section 484(a)(6);

"(C) if advised by the Immigration and Naturalization Service that a student is in an immigration status that renders the student ineligible for assistance, afford such student the opportunity to prove otherwise by submitting satisfactory evidence of an eligible immigration status, prior to making any decision to deny or terminate the student's assistance under this title;

"(D) follow the verification procedures described in subparagraphs (A), (B), and (C), and regulations prescribed under subsection (b) (2), each time the student applies for a grant, loan, or work assistance under the title, but shall not be required to verify the student's immigration status more frequently than once per award year; and

"(E) provide such safeguards as may be necessary to ensure that information received from a student or the Immigration and Naturalization Service pursuant to subparagraphs (A), (B), and (C) is used only to the extent necessary to assist in the valid administrative needs of the entity receiving such information, and is adequately protected against unauthorized disclosure for other purposes; or

"(2) obtain a waiver from the requirements of paragraph (1) in accordance with subsection (b).

"(b) (1) If the Secretary, in consultation with the Attorney General, determines that, for any program of grant, loan, or work assistance under this title, there is in effect an alternative system which is as effective and timely for purposes of verifying alien eligibility as the system described in subsection (a) (1) or that the cost of implementing the requirements of such subsection would exceed any savings that may be derived therefrom, the Secretary may waive the requirements of such subsection, either on a program-wide basis or for an individual entity.

"(2) The Secretary, in consultation with the Attorney General, may promulgate regulations in order to avoid duplicative verifications of a student applying for a grant, loan, or work assistance under this title from more than one source in any fiscal year.".

(b) SOCIAL SECURITY ACT DEFINITION OF PERMANENTLY RESIDING IN THE UNITED STATES UNDER COLOR OF LAW.—

(1) IN GENERAL.—Section 1101(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(10) The term "alien permanently residing in the United States under color of law" means an alien who is lawfully present in the United States as a result of the application of the provisions of—

"(A) Section 207 of the Immigration and Nationality Act (relating to refugees);

"(B) Section 208 of such Act (relating to asylum);

"(C) Section 203(a)(7) of such Act as in effect prior to April 1, 1980 (relating to conditional entry prior to such date);

"(D) Section 212(d)(5) of such Act (relating to parole) at least five years earlier; or

"(E) Section 243(h) of such Act (relating to a decision of the Attorney General to withhold deportation).".

(2) CONFORMING AMENDMENTS.—(A) Section 1614(a)(1)(B) of the Social Security Act is amended by striking out "otherwise permanently residing" and all that follows, and inserting in lieu thereof "(iii) an alien lawfully admitted for temporary residence in accordance with the provisions of section 245A of the Immigration and Nationality Act or (iv) an alien permanently residing in the United States under color of law (as defined in section 1101(a)(10).".

(B) Section 402(a)(33)(B) of such Act is amended by striking out "otherwise permanently residing" and all that follows, and inserting in lieu thereof "(C) an alien permanently residing in the United States under color of law (as defined in section 1101(a)(10));".

(3) EFFECTIVE DATE.— The amendments made by this subsection shall be effective upon the date of enactment of this act, except that such amendments shall not apply in the case of any alien who, on the basis of an application filed prior to such date, is eligible to receive benefits under the program of aid to families with dependent

children authorized by part A of title IV of the Social Security Act or the supplemental security income program authorized by title XVI of such Act (which includes, for purposes of this subsection, the program of State supplementary payments which are made pursuant to section 1616(a) of such Act or section 212(b) of Public Law 93-66) for the month in which this act is enacted, for such time as such alien continues without interruption to be eligible to receive such benefits.

Purpose:
To provide for the continued eligibility
for AFDC benefits of "color of law" aliens
eligible for such benefits on the basis
of an application filed prior to the
enactment of H.R. 3810.

AMENDMENT

Proposed by __________ to H.R. 3810, a bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

On page 70, line 25, strike out "or".

On page 71, line 8, strike out the period at the end and insert ", or ".

On page 71, after line 8, insert the following:

"(D) in the case of benefits under the program of aid to families with dependent children authorized by part A of title IV of the Social Security Act furnished to an alien who is eligible to receive such benefits on the basis of an application filed prior to the date or enactment of this Act, for such time as such alien continues without interruption to be eligible to receive such benefits."

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN
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U.S. HOUSE OF REPRESENTATIVES
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(202) 225-4247

August 5, 1986

Honorable Peter W. Rodino, Jr.
Chairman
Committee on Judiciary
U.S. House of Representatives
2137 RHOB
Washington, D. C. 20515

Dear Mr. Chairman:

Pursuant to our responsibilities under the sequential referral of H. R. 3810 to the Banking, Finance and Urban Affairs Committee and the requirement that by August 5, 1986, we recommend amendments to provisions affecting programs under the jurisdiction of this Committee, we recommend the adoption of several changes.

The changes which are incorporated in the enclosed amendment are necessary to assure that H. R. 3810 is consistent with the reforms approved by the House of Representatives when H. R. 1 was passed on June 12, 1986. The amendment includes provisions to permit elderly residents to certify as to their immigration status and to assure that any family containing a citizen or eligible alien may receive housing assistance without regard to the immigration status of other members of the family. In addition, the amendment would assure that any family initially determined ineligible for assistance because of the immigration status of its members would be able to have a hearing before a final determination is made.

A number of issues have been raised with the requirement that the status of each alien be verified with the I.N.S. through the S.A.V.E. system. The Housing Subcommittee will be holding a hearing on this issue tomorrow and may forward additional recommendations to the Judiciary Committee shortly thereafter.

Sincerely,

Fernand J. St Germain, Chairman

Chalmers Wylie, Ranking Minority Member

Enc.

GONZAL171

[Housing 2]
[8-4-86]

AMENDMENT TO H.R. 3810, AS REPORTED BY THE COMMITTEE ON THE JUDICIARY

OFFERED BY MR. GONZALEZ OF TEXAS

Page 49, line 12, strike ``(d)'' and insert ``(c)''.

Page 50, line 4, insert after ``States'' the following: ``and is not 62 years of age or older''.

Page 51, line 4, insert after ``States'' the following: ``and is not 62 years of age or older''.

Page 51, line 5, insert ``or recertification'' after ``application''.

Page 51, line 14, insert after the comma the following: ``or to appeal the verification determination of the Immigration and Naturalization Service under paragraph (3),''.

Page 51, strike lines 21 through 23 and insert the following:

``(B) if any documents or additional information are submitted as evidence under subparagraph (A), or if appeal is made to the Immigration and Naturalization Service with respect to the verification determination of the Service under paragraph (3)--

Page 52, line 2, insert ``or additional information'' after ``documents''.

Page 52, line 3, insert ``or appeal'' after ``verification''.

Page 52, after line 20, insert the following new paragraph:

``(6) For purposes of paragraph (5)(B), the applicable fair hearing process made available with respect to any individual shall include not less than the following procedural protections:

``(A) The Secretary shall provide the individual with written notice of the determination described in paragraph (5) and of the opportunity for a hearing with respect to the determination.

``(B) Upon timely request by the individual, the

Secretary shall provide a hearing before an impartial hearing officer designated by the Secretary, at which hearing the individual may produce evidence of a satisfactory immigration status.

``(C) Not later than 45 days after the date of the request of the individual for a hearing, the Secretary shall notify the individual in writing of the decision of the hearing officer on the appeal of the determination.

Page 52, strike lines 21 through 23 and insert the following:

For purposes of this subsection, the term `Secretary' means the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.

Page 52, line 24, strike ``(e) The Secretary'' and insert the following: ``(d) The Secretary of Housing and Urban Development''.

Page 53, line 8, strike ``(d)(4)(A)(ii)'' and insert ``(c)''.

Page 53, line 11, strike ``(d)(4)(B)(ii)'' and insert ``(c)''.

Page 53, line 16, strike ``(d)(5)(B)'' and insert ``(c)''.

Page 59, strike line 24 and all that follows through page 60, line 11, and insert the following:

(6) UNDER HOUSING ASSISTANCE PROGRAMS.--Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a), as amended by subsection (a)(3) of this section, is further amended by adding at the end the following new subsection:

``(f) The Secretary of Housing and Urban Development is authorized to pay to each public housing agency or other entity an amount equal to 100 percent of the costs incurred by the public housing agency or other entity in implementing and operating an immigration status verification system under subsection (c).''.

Page 79, line 4, strike ``or''.

Page 79, line 11, strike the period and insert ``, or''.

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Page 79, after line 11, insert the following new subparagraph:

``(D) in the case of financial assistance subject to section 214 of the Housing and Community Development Act of 1980, unless such financial assistance would be made available solely on the basis of the granting of temporary or permanent resident status to an individual (or to another member of the family of such individual) under subsection (a) or (b)(1) of this section.

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[Housing 3]
[8-11-86]

AMENDMENT TO H.R. 3810, AS REPORTED BY THE COMMITTEE ON THE JUDICIARY

OFFERED BY MR. GONZALEZ OF TEXAS

Page 49, after line 11, insert the following new subsection:

``(c)(1) In the case of any family in which any member is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of the paragraphs (1) through (5) of subsection (a), the restriction established in subsection (a) shall not apply to--

``(A) the continued provision of any financial assistance commenced before the date of the enactment of the Immigration Control and Legalization Amendments Act of 1986;

``(B) the provision of any financial assistance pursuant to a conversion from any other financial assistance; or

``(C) the provision of any financial assistance to an individual displaced from a dwelling as a result of an activity of the Federal Government or an activity approved or assisted by the Federal Government.

``(2) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of--

``(A) any alien who--

``(i) has a residence in a foreign country that such alien has no intention of abandoning;

``(ii) is a bona fide student qualified to pursue a full course of study; and

``(iii) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

``(B) the alien spouse and minor children of any alien described in subparagraph (A), if accompanying such alien or following to join such alien.

Page 52, line 21, strike ``(e)'' and insert ``(f)''.

Page 52, after line 23, insert the following new subsection:

``(e)(1)(A) With respect to each program of financial assistance, the Secretary of Housing and Urban Development shall examine and report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)--

``(i) the application of the immigration status verification system established in subsection (d) to the program is cost-effective and otherwise appropriate; and

``(ii) there should be a waiver of the application of such system under paragraph (2).

``(B) The provisions of subsection (d) shall not apply with respect to any program of financial assistance until after the date of receipt of such report with respect to the program.

``(2) The Secretary of Housing and Urban Development may waive the application of the immigration status verification system established in subsection (d) to any program of financial assistance to the extent (by State or other geographic area or otherwise) that the Secretary determines, on the initiative of the Secretary or upon an application by a public housing agency or other administering entity, following consultation with the Immigration and Naturalization Service, and based on such information as the Secretary deems persuasive (which may include the results of any report by the Comptroller General of the United States and information contained in such an application), that--

``(A) the Secretary has in effect an alternative system for verifying immigration status with the Immigration and Naturalization Service that--

``(i) is as effective, accurate, and timely as the immigration status verification system established in subsection (d) with respect to the program; and

``(ii) provides for at least the hearing and appeals rights for beneficiaries that would be provided under subsection (d), including the presumption of eligibility for financial assistance; or

``(B) the costs of administration of the immigration status verification system established in subsection (d), and the costs of administration of the alternative immigration status verification system established under subparagraph (A), exceed the estimated savings.

``(3) The determinations under this subsection shall be based upon the estimate of the Secretary of Housing and Urban Development of--

``(A) the number of aliens claiming benefits under the program of financial assistance in relation to the total number of claimants seeking benefits under the program;

``(B) any savings in benefit expenditures reasonably expected to result from implementation of the immigration status verification system involved;

``(C) the labor and nonlabor costs of administration of the immigration status verification system involved;

``(D) the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the Secretary, public housing agency, or other administering entity in order to permit a reliable determination of immigration status; and

``(E) such other factors as the Secretary determines to be relevant.

Page 52, line 24, strike ``(e)'' and insert ``(f)''.

Page 53, line 8, strike ``(d)(4)(A)(ii)'' and insert ``(d) or (e)''.

Page 53, line 11, strike ``(d)(4)(B)(ii)'' and insert ``(d) or (e)''.

Page 53, line 16, strike ``(d)(5)(B)'' and insert ``(d) or (e)''.

Page 60, beginning on line 8, strike ``section 214(c)'' and insert ``subsection (d) or (e) of section 214''.

STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12240

LILLIAN ROBERTS
COMMISSIONER OF LABOR

February 7, 1986

Mr. William Heartwell
Interstate Conference of Employment
 Security Agencies, Inc.
Suite 126
444 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Heartwell:

The requirement for state unemployment insurance administrators to verify the alien status of claimants, included in the proposed Immigration Control and Legalization Amendments Act of 1985 (H.R. 3810) gives us great concern.

Recently New York State participated in a short demonstration project, in conjunction with the Immigration and Naturalization Service, in their so-called SAVE program. Although this project extended only thirteen weeks, the program produced only modest overpayments, but more important created considerable trauma and concern among claimants whose ~~status was~~ questioned and among staff who were required to administer the project.

The pilot project established that the data on the INS computer files is extremely unreliable. This led to unnecessary questioning of the status of many individuals admitted legally to this country under special programs, whose legal residence apparently is not recorded on the INS files. An underlying weakness of any mandated program to verify the status of aliens, of course, lies with the fact that the claimant himself indicates whether he is a citizen or non-citizen. If the claimant does not indicate that he is a non-citizen, no verification of his status is undertaken.

Below I share with you some of our findings and observations from the SAVE pilot project:

1. Of 12,238 cases sent to INS for verification during the three-month pilot project, only 1,374 were returned as potential problems.

2. There was no significant benefit for the Department of Labor to participate in the SAVE program. Of 12,238 claims filed by non-citizens during the test period, only 54 cases resulted in overpayments totalling $51,722.00. It should be noted for perspective that New York State paid over $1 billion in benefits last year.

3. The INS computer files in Washington are unreliable. Many individuals granted special status such as political refugees from Cuba, Hungary, Poland, etc. were not in the computer files. In addition, the files in Washington did not show records of some individuals admitted over 30 years ago. In nearly every instance the INS district office provided information opposite of that furnished by the INS in Washington.

4. There was a great deal of trauma created among aliens legally admitted to the United States when they were advised of the data reported by INS in Washington. Many claimants were frightened and became quite upset. This had a further unsettling effect on operations in the local office.

5. INS response to information was not timely. Some requests were answered almost immediately while others took three months.

Because of the above situation, we are not interested in continued involvement with the SAVE Project. The proposed requirement in H.R. 3810 will be an unnecessary burden on State Employment Security Agencies and we are opposed to the proposal. We feel what is unsaid in this whole proposal is that the claimant who is answering the citizenship question honestly is the one whose status is pursued. There is no way to check on or detect the dishonest alien who answers the citizenship question incorrectly. It is more than likely that the true illegal alien will not be honest in answering this question.

If ICESA is going to take a position on H.R. 3810, we hope you will consider the experience of New York State with SAVE.

Sincerely,

Lillian Roberts

Lillian Roberts
Commissioner of Labor

TESTIMONY OF
EMANUEL P. POPOLIZIO
CHAIRMAN
NEW YORK CITY HOUSING AUTHORITY

BEFORE THE

HOUSE COMMITTEE ON BANKING,
FINANCE AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
AND
HOUSE SELECT COMMITTEE ON AGING

Edward R. Roybal
Chairman
Select Committee on Aging

Henry B. Gonzalez
Chairman
Subcommittee on Housing
and Community Development

August 6, 1986

I would like to thank Congressman Roybal, Chairman of the Select Committee on Aging, and Congressman Gonzalez, Chairman of the Subcommittee on Banking, Finance and Urban Affairs, for inviting me here to testify.

As you know, the New York City Housing Authority, of which I have the considerable honor to be Chairman, operates what is by far the nation's largest public housing program. Our housing stock comprises over 300 developments, the great number (277) of which are federally subsidized. Some 154,000 apartments are thus subsidized by the federal government and they house approximately 450,000 people. In addition we conduct the existing housing portion of the Section 8 Leasing Program with some 39,000 apartments and another 100,000 people. Of this entire recorded population of 550,000 people, over 92,000 are elderly persons.

I do believe that the position of our authority on the illegal alien regulation is well known by now. To reiterate, when it was first promulgated I stated that, first of all, the regulation has the force and effect of federal law and we will obey the law, let there be no mistake.

However, I also stated that we have serious reservations about the regulation and its statutory base - on moral, humane and practical economic grounds. Although, on the face of it, one could hardly object to a policy aimed at making sure that scarce low-income housing is reserved for American citizens, it is unfortunately not that simple.

The core of our argument is that the regulation is unfair, inhumane, and an administrative nightmare.

First of all, prior to 1980 there were no requirements with regard to citizenship or specific alien status for admission to public housing. Thus many families who entered public housing in good faith may not now be eligible. This change in the rule after so many years seems to us unfair and inhumane, a sort of entrapment - not in the least morally.

Although legislation prohibiting public housing assistance to ineligible aliens was enacted in 1980 and 1981, HUD first proposed a rule and then issued a final version in 1982. However, it was not made effective at that time because of substantial public opposition. In fact Congress enacted a provision in the Housing and Urban Rural Recovery Act of 1983 barring HUD from implementing the provision of housing assistance to ineligible aliens for a one year period ending in November 1984. Thus ineligible aliens could possibly have entered public housing since then since, in effect, public housing agencies were actually instructed by HUD not to enforce the law during this period.

According to the published rule, families which have as members one or more ineligible aliens must face eviction. This would have the effect of breaking up families and place a special hardship on the elderly because there is no provision for alternative housing. In New York City this would amount to throwing them out on the street and adding to the homeless population which is already a major problem for us.

Besides moral and human rights, there is a coldly economic side to this as well. Public housing agency staffs would be required to absorb the substantial administrative burden involved with required documentation at the busy time of annual income re-examinations. Although the rule now states that the public housing staff is not responsible to assist the family in obtaining the required verification, in real life our staff would have to help those tenants, particularly the elderly, deal with the verification procedures in order to get it done.

We would also have to issue instructions, train staff, review requests for extensions, implement procedures, report questionable cases, initiate eviction proceedings, etc., all without any financial reimbursement from HUD. We currently estimate that in order to comply with the work involved with the regulations we would have to, at the minimum, hire 56 additional Housing Assistantsthe people who deal directly with tenants - at a total cost of $1.6 million per year.

This constitutes the essence of our argument that the proposed regulation is unfair, inhumane and costly.

Our suggested remedy is to amend the law to permit those currently in the program to remain, in effect to "grandfather" the statute making it applicable only to those tenants admitted to public housing henceforth.

Now that I have stated our position, I would like to express my sincere appreciation to both Congressman Roybal and Congressman Gonzalez for the amendment contained in HR-1 modifying the restriction on the use of exisiting housing by aliens. We regard this as an act of courage, wisdom and humanity, a substantial improvement in the existing law which would have created enormous human misery and onerous, expensive and probably unworkable administrative problems.

In the context of the difficulty of getting a housing bill through the Congress and signed by the President, we regard the proposed amendment as a real accomplishment and a major step forward. Now, however, we understand that there is an added dimension being brought to this entire problem - and that is the application of systematic alien verification systems to the procedures outlined in the law. This is contained in the Immigration Control and Legalization Amendment Act of 1986.

The amendment proposes using computerized data banks to check the status and eligibility of aliens. On paper, this sounds like the essence of practicality. When envisioned, this general program known as "SAVE" (Systematic Alien Verification for Entitlements), was intended to prevent the payment of entitlement benefits to ineligible alien claimants. Although housing is not technically an entitlement (although, parenthetically, I believe it should be), nevertheless we are included in this proposed program which may be mandatory.

The Immigration and Naturalization Service (INS) will provide access to a data base called Alien Status Verification Index System. It is proposed that automated record terminals be placed in agencies which administer specialized social programs. Tenants and applicants would have to make written declarations and submit documentation which the agency, using these terminals, would use to check this information against the INS data base. If the computer identifies the alien in a satisfactory status, the application will proceed normally.

If, however, the match reveals an irregularity, or no information, the agency would then submit verification documents to the INS, which would in turn verify the applicant's immigration status. If the person is determined by INS to be in an unsatisfactory immigration status, that person would be automatically ineligible for public housing. Once again, the elderly, in residence for many years, would be the most vulnerable because they would have the most difficulty in providing documentation.

As my father used to say, "that sounds good if you say it fast." In the first place, it is our understanding that INS data itself has proved to be incomplete and often inaccurate. (See statement of National Governors' Association dated July 22, 1986). Just because something is transmitted electronically does not necessarily make it true. I think many of us are finding out that computers, while they have their uses, are not a panacea.

Although we also understand that since 1980 INS has made efforts to improve its automated data collection system, nevertheless, in practical terms, there would have to be at least several years' delay before these magic systems could be put into place.

Now remember that our income verification procedures are done in the projects themselves by the aforementioned Housing Assistants and that we have 277 federally subsidized developments. To install this system would require an INS computer terminal in each of these 277 locations. We would also have to hire and train staff. This earlier figure I gave you on the cost of implementing the current alien law may have to be more than doubled. In fact, the proposed verification system would require the Authority to do more than just receive documents, but also to participate in the verification of the alien status of all tenants, and in the event of a dispute on the facts, to provide the tenant or applicant a fair hearing. In terms of work load and cost, all of this is far above what was required of the Authority under the original alien law and recent HUD regulations.

In short, as the current jargon has it, given the small number of illegal aliens, this program would not be "cost effective".

What bothers me most about all of this though is that in effect we would be creating an additional arm of the INS within the Housing Authority - and this, I submit, is not our proper business.

We also understand that it has been proposed that under certain circumstances agencies may obtain a waiver from the SAVE system if they have an equally effective alternative system. Frankly, we do not have one, and we think that the approach taken by the Roybal Amendment is the best way to go because it will substantially remove the necessity for such a complicated mechanism.

Before we leave this subject, there is one other factor which must be taken into consideration if we are to have a true picture of just how much is involved in all this. There are, undoubtedly, a number of illegal aliens living in public housing. However, many, even most of them are probably part of the "doubled up" population that the Authority has acknowledged in recent months to amount to an addition of some 20% to our recorded population. We have not taken large scale measures to evict these people because it would simply add to the city's homeless population and because we are not equipped to do so. Thus they do not appear at all in our data banks so the INS data cannot touch them. All of this raises the very serious question as to how effective all of this would be in removing "illegals."

In regard to charges that the retention of illegal aliensin public housing prevents substantial numbers of American citizens from gaining access to the program, the numbers, however aggressively projected, do not support this. Because we are no longer being permitted funding to construct new public housing developments, we are able at present to admit very few new families into the projects. Our waiting list now numbers over 200,000 families. We have no vacant apartments and our turnover is slightly above 3%. A tiny portion of this tiny percentage may be illegal aliens.

In general then, I feel strongly that this entire problem of illegal aliens has been much overstated. A quick reading of recent press reports gives the impression that illegal aliens are swarming all over our projects. This simply isn't so - and another thing which disturbs me is that in employing such draconian methods, in assembling this vast panoply of electronic alien spotting equipment we may be using the proverbial sledge hammer to drive a tack. In view of our past permissive policy of allowing aliens into public housing, it seems both insensitive and inhumane to throw them out on the street and add to the homeless population, particularly when we realize that so few families are actually involved.

This in general is the position of the New York City Housing Authority. In regard to the great City of New York itself: Can we forget that the recently and justly celebrated refurbished Statue of Liberty stands in our harbor, her proud torch still a beacon of hope to the oppressed of this world? We have been the gateway city, and we will forget this at our peril. Can we forget our own forbears, many of whom came to this country in the holds of immigrant ships, legally and illegally?

Our Mayor, Edward I. Koch, has gone on record as saying:

> "I do not endorse the right of people to enter the United States illegally. But once they are here, they must be treated with justice and dignity - and it is up to the federal government, if it cannot stop them or find them,at least to have the decency to help states and cities pay for providing essential social services to them, e.g. medical care. It is my policy as major that the rights and opportunities of all persons who reside in New York City must be protected. As long as I am mayor, the City of New York will always provide essential services -- police and fire protection, education, housing, and health care -- to all persons, regardless of immigration status."

In short, it has indeed been an honor to appear before these two distinguished committees. But don't we all in our hearts feel that we could be better employed spending our time doing what we have been sent here by the people to do - to work with all our considerable abilities toward providing the shelter, employment, nourishment, health care and education people need to survive in our society - and for our nation in turn to survive and prosper.

Don't make our pacific New York City Housing Authority do the work of the Immigration Department and the Border Patrol. Do not make us tear families to pieces and put elderly and handicapped people out on the inhospitable streets. Let us instead together seek ways to solve these problems that will be in harmony with our great national heritage of fairness and decency, our ideal of "Liberty and Justice for All."

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TESTIMONY OF

REVEREND MONSIGNOR NICHOLAS DIMARZIO
EXECUTIVE DIRECTOR, MIGRATION AND REFUGEE SERVICES

ON BEHALF OF THE

UNITED STATES CATHOLIC CONFERENCE

BEFORE THE

HOUSE OF REPRESENTATIVES

SELECT COMMITTEE ON AGING

AND

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

on

H.R. 3810

AUGUST 6, 1986

DEAR MR. CHAIRMEN, MEMBERS OF THE SELECT COMMITTEE ON AGING AND SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT:

We welcome this opportunity to submit oral and written testimony on Section 121 of H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985." The United States Catholic Conference (USCC) has been on record with an overall position on this section and it is my intent to reiterate and expand on this position.

Section 121(a)(3) of the Bill would add a new subsection (d) to Section 214 of the Housing and Community Development Act of 1980 requiring public housing authorities and other entities responsible for determining eligibility for public housing applicants and for annual redetermination of eligibility of residents in public housing to submit copies of evidential proof to the Immigration and Naturalization Service (INS) for verification of satisfactory immigration status.

This provision conflicts with Section 246 of H.R. 1 which also would add a new subsection (d) to the Housing and Community Development Act of 1980 would replace Section 214(a) of the Housing and Community Development Act of 1980, (H.R. 1) as amended on June 12, 1986, restricting access by aliens to public housing benefits. The USCC considers the language in H.R. 1 preferable to that proposed in H.R. 3810. Furthermore, the USCC questions the wisdom and necessity of these rules which will in effect limit the rights of productive aliens in our society.

First, we would like to describe why the H.R. 1 provision is more preferable than the H.R. 3810 language. Section 246 of H.R. 1 would require a member of a family in assisted housing to verify that he/she is a U.S. citizen or permanent resident. Section 246 would not affect the continued provision of any assistance to alien family units in which any one can prove his legal status before the date of enactment of the Housing Act of 1986 and protects aliens who might become displaced by federally-assisted housing development activities. H.R. 1 in effect includes a grandfather clause which will protect many U.S. born citizen children from discrimination in obtaining assisted housing benefits. Section 246 exhibits considerable wisdom in its certification and documentation procedures by maintaining a simple declaratory system backed by clearly defined documentary evidence. Most importantly, Section 246 would exempt those over 61 years of age from this requirement. By contrast, H.R. 3810 fails to address the problem of the foreign born elderly, the oldest of whom have the greatest difficulty in proving satisfactory immigration status. Given the fact that a large proportion of public housing occupants are elderly, this provision will present no small problem, since the percentage of elderly on assisted housing is approximately 40 percent.

Elderly foreign born -- the very group likely to be most heavily represented among residents in publicly assisted housing -- will encounter the greatest difficulty in documenting their satisfactory immigration status. Many among them have lived in the U.S. for decades but may have only recently--or never-- become U.S. citizens. We are certain that in neither of the two Bills is the patriotism or loyalty of these elderly questioned. Yet, many of them have no proof of entry into the United States. This will be especially true for many European, Chicano, Asiatic and even Puerto Rican elderly whose U.S. citizenship status may be questioned and cannot be quickly established. The procedure to obtain such proof from ship manifests and other sources is arduous and not always successful and, as a result, many among our foreign born elderly will be hard-pressed to present appropriate documents as proof of satisfactory immigration status. The Housing Act recognizes what the Immigration Bill does not -- the impracticality of subjecting senior citizens to a procedure which will produce few results except anxiety for our foreign born elderly who are among our most loyal citizens.

Furthermore, under the Immigration Bill proposal, public housing authorities and other entities would then be asked to use this information to verify with the INS the applicant's or recipient's immigration status. If the individual is judged by the INS not to be eligible for benefits, the Housing Authority shall provide the alien with an "opportunity to prove" that he/she is in a satisfactory immigration status for the applicable program. The responsible entity shall then forward to the INS the evidence provided for official verification. If the individual is found ineligible for benefits under the applicable programs, the housing authority shall deny or terminate the individual's participation in the program.

The USCC understands the legislation's interest in such verification and the goals of the Systematic Alien Verification for Entitlement Project (SAVE) of the Immigration and Naturalization Service. However, although we recognize the need to assess with certainty the eligibility of the individuals applying for the programs under question, we are concerned with the fact that the SAVE project has neither been adequately evaluated nor its reliability tested. And although the legislation asks the INS to designate a verification system by October 1, 1987 (which may or may not be based on the SAVE project), in view of the INS history with overall record-keeping and the management of large-scale data-bases, we are convinced that adopting such a program on a nationwide basis would strain severely the ability of the agency to reply to housing authority requests with the requisite speed and reliability.

We want to emphasize that our principal concern with SAVE stems from the present inability of the INS to handle large-scale data-based programs at a time when its data entry system and controls are at a yet embryonic stage and the demands on its infrastructure and overall resources are going to be increased exponentially by the other key provision of this legislation.

Our overall concern has been fueled by a number of independent, if yet incomplete, studies of the SAVE system which have already pointed to the unreliability of the INS automated data system. Immigration and Naturalization Service officials have acknowledged that there are gaps in Service computerized file systems. States, such as New York and Washington, have pointed to these problems in reports about the SAVE system's ineffectiveness. Furthermore, the cost savings associated with the implementation of the SAVE system up to date have been rather meager. Although we do not wish to argue that no savings, particularly those in the future, are worth the implementation of the system, adding the potential problems associated with the program as it currently stands to the low level of expected savings compels us to recommend against the implementation of SAVE at this time. As it stands now, the SAVE program has the potential of not only inconveniencing, but actually delaying and even interfering with the ability of legal resident aliens to obtain benefits to which they are entitled and which are essential to their well-being. A recent evaluation of the program in California by a General Accounting Office audit, as well as a court-ordered review in Illinois certainly argue in favor of caution in the further implementation of SAVE.

In other words, in view of the fact that the present SAVE system may be based on a flawed data-base, and hence may interfere with the ability of individuals to obtain benefits to which they are entitled, and that SAVE has not been fully and completely evaluated by independent and reliable agencies, we strongly recommend that implementation of Section 121 of the Bill be postponed until such time when the ability of the INS to develop a system able to detect all illegitimate claims for benefits accurately and quickly can be established.

The USCC position on providing benefits to the newly legalized has been clear. The institution of the SAVE program contemporaneously with the legalization program will most likely result in confusion as to the status of the newly legalized and their eligibility for benefits when their new documentation is not readily available. We have consistently held that it is in the public interest that all basic social and medical assistance services available to all U.S. permanent resident aliens be extended to those qualifying and choosing to apply for permanent residence status. While we are aware of present political and budgetary pressures to curtail the number of those who may qualify for such programs, the Conference is convinced that such abridgements are not in the best interests of a just and prosperous society.

But most of all, we are particularly concerned with the complications arising out of applying different eligibility criteria to members of mixed legal and newly legalized households which, in this instance, may result in U.S. citizen children receiving only circumscribed housing benefits because of the clandestine status of their parents.

As a result, and although we are pleased with the thoughtful list of exceptions to the application of Section 121 included in H.R. 3810, we urge additional forbearance and generosity with regard to making legalized aliens eligible for the widest possible set of housing benefits.

The use of income transfer and other federally subsidized services by undocumented aliens has not been adequately addressed by reliable research. The difficulties in trying to produce conclusive results in this very important social policy question are very substantial. As a result, our social and immigration policy has relied on questionable assumptions. It seems that one popular portrait of undocumented aliens sees them as the "takers" in our society. Research abounds, however, which draws a picture of all aliens -- including those who are undocumented -- as giving more than they take from the public coffers. The work by Julian Simon on census data, Tom Muller in California, Sidney Weintraub in Texas, DiMarzio in New Jersey, and Papademetriou and DiMarzio in New York certainly leads to this conclusion.

DiMarzio's research, for instance, showed that very few undocumented aliens took advantage of federally-assisted income transfer programs.[1] The sample for this study was 1,800 undocumented aliens who were part of a survey undertaken in the New York metropolitan area. There is little evidence of any widespread use of income transfer programs -- and one can include housing assistance programs -- by undocumented aliens.

The reality about these alien low income workers is that they are in effect indispensable to our secondary labor market which is increasingly in need of low income workers. Our social policy over the past 50 years has been to subsidize low income workers by offering them housing assistance. Subsidized housing is not an entitlement. It is available on a "first come, first served" basis after evidence of low income is provided. Denying access to such housing to one component of the working poor -- undocumented aliens -- is unfair and unnecessary.

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[1] N. DiMarzio, Profiling Undocumented Aliens in the New York Metropolitan Area: Social Welfare and Labor Market Implications. New Brunswick: Rutgers University, 1985. Unpublished doctoral dissertation.

There is no evidence of widespread use of housing assistance by undocumented aliens. Those seeking housing assistance must give evidence of their income -- most often by the presentation of a W-2 statement of earnings form. In most cases, they are also required to submit their social security numbers as required under Section 601 of the Housing Act. In effect, then, we seem to be trying to exclude the most "documented" of this "undocumented" population from publicly assisted housing. In addition, these aliens are in fact paying their fair share of the rental for the units in which they are presently residing.

Given (a) the inconvenience and probable inability of many residents, and especially of the elderly, to comply with the proposed documentation requirements; (b) the injustice that would be inflicted upon mixed family units where American-born citizen children would be excluded from receiving housing benefits because of their undocumented parents; and (c) the probable ineffectiveness and unproven advantages of the SAVE program , it is the plea of the United States Catholic Conference that the implementation of the SAVE program in its entirety, and especially in regard to its housing component, be postponed.

In reporting out the Housing Act of 1985, the Committee report argued that restrictions on use of assisted housing

> . . . will produce extraordinary hardships, excessive paperwork and unnecessary financial difficulties for the individuals, the owners, and, in some cases, the Federal Government. The injustice that would be caused by implementation of Sec. 214 of the Housing and Community Development Act of 1980 include: the mandatory eviction of thousands of families now residing in federally subsidized housing; the eviction of individuals who are citizens or who are properly documented aliens because other members of their household cannot meet the documentation requirements; the denial of admission to families which include citizens and properly documented aliens because not all family members can be properly documented; and the imposition of documentation and verification requirements upon citizens and aliens alike which are not only unduly burdensome, but also impossible even for some citizens to meet.[2]

As can be seen from the report language, the Committee on Banking, Finance and Urban Affairs has chosen the wiser course in eliminating unnecessary restrictions in the use of publicly assisted housing. We would recommend that H.R. 3810 follow the same course of action.

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August 6, 1986

THE IMPACT OF "SAVE" ON ASSISTED HOUSING TENANTS AND APPLICANTS

Statement of Cushing N. Dolbeare, founder, National Low Income Housing Coalition, before House Subcommittee on Housing and Community Development and Select Committee on Aging.

I. Introduction

The National Low Income Housing Coalition appreciates this opportunity to testify on the impact of the proposed "SAVE" (Systematic Alien Verification for Entitlement) provision of H.R. 3810 on low income households residing in or seeking federal housing assistance. In 1983, the Coalition was active in seeking to ameliorate the severe and, we believe, largely unintended consequences of the adoption of Section 214 of the Housing and Community Development Act of 1980 on low income housing residents where some family members are able to document their eligibility, but others are not. In addition, I have a longstanding interest in immigration policy and, as a consultant on housing and public policy since leaving the Coalition staff in 1985, I have personally been actively involved in a number of matters relating to the situation and status of undocumented persons.

II. Some legislative history

It is important to remember that the impetus for the adoption of what is now Section 214 came because a number of students had overstayed their visas and there was, at the time, no basis in law for excluding them from subsidized housing. From this, we got 1980's draconian provision, as interpreted literally by HUD, that each individual family member must be a U.S. citizen or national or an eligible alien, if the household is to be permitted to remain in subsidized housing.

Moreover, in 1983, the Administration signed off on a Senate provision -- which the National Low Income Housing Coalition helped to frame -- that would have changed the restriction to require, instead of each family member, that "the head of a family or a majority of its members" be U.S. citizens, nationals or eligible aliens. The House-passed bill, taking a slightly different approach, would have amended Section 214 to apply the restriction to those applying for assisted housing after the date of enactment of the Housing and Urban Rural Recovery Act of 1983.] At the insistence of a key Senator, the modification of Section 214 was dropped in the final negotiations which led to adoption of the Act.

In June of this year, the House, as part of H.R. 1, made another attempt to modify Section 214, exempting residents of subsidized housing as of date of enactment if any member of the family "is a citizen of the United States, a National of the United States, or an [eligible] alien resident of the United States...." This provision was adopted by voice vote, with bipartisan support.

The requirement that all present residents of assisted housing comply with the provisions of Section 214 raises two major practical problems. First, people, particularly elderly persons, may in fact be citizens or eligible aliens, but be unable to obtain the documentation to prove it. [H.R. 1 deals with this problem by permitting persons aged 62 or over who are not U.S. citizens or nationals to make a declaration, under penalty of perjury, of their immigration status.] Second is the problem faced by mixed households, where one or more members are not eligible. Based on June's action on H.R. 1, it is clearly not the House's intention that such households be evicted. The National Low Income Housing Coalition fully supports this position.

III. The Size of the "Problem"

The premise of the SAVE provisions in H.R. 3810 is that significant federal funds could be saved if undocumented aliens could be barred from federal programs, including housing. The assumption is clearly that there are significant numbers of such persons now obtaining federal benefits. There is little evidence that this is true of any of the programs covered by the SAVE provisions, and none that it is the case in housing under any reasonable interpretation of the House's intent.

According to the INS, roughly 90% of their apprehensions are Mexicans. A substantial proportion of the remaining 10% are from other Spanish-speaking countries. Thus, an examination of the admittedly fragmentary data available on Hispanic occupants of assisted housing provides some insights on the need for and impact of the occupancy restrictions of Section 214.

Analysis of Annual Housing Survey and other Bureau of the Census data make it possible to estimate the size of the Hispanic population living in assisted housing. The 1983 Annual Housing Survey estimated that there were a total of 166,000 families with householder of Spanish origin living in subsidized housing. This is just under 5% of all households living in government-subsidized units. (See Table below.) It is 6.4% of Hispanic renter households, and a tiny 0.6% of "specified" renter households, a total which excludes a small number of one-unit structures on 10 acres or more.

SUBSIDIZED AND UNSUBSIDIZED UNITS, BY HISPANIC OCCUPANCY, 1983
Specified renter-occupied units (numbers in thousands)

	Total		Hispanic	
	Number	Percent	Number	Percent
U.S. TOTAL	29,214	100.0%	2,585	100.0%
Private housing units	26,690	91.4%	223	8.6%
No government subsidy	25,283	86.5%	2,333	90.3%
Not reported	209	0.7%	2,166	83.8%
With government subsidy	1,199	4.1%	131	5.1%
Units in public housing	2,180	7.5%	35	1.4%
Not reported	343	1.2%	30	1.2%
Total subsidized units	3,379	11.6%	166	6.5%

Source: 1983 Annual Housing Survey, Part C, Tables A-1 and A-7.

More recent data, using a different base and survey technique, is available from the Census Bureau report on Characteristics of Persons Receiving Selected Noncash Benefits, 1984. This survey reports that, as of March 1985, there were an estimated 3,588,000 households in subsidized housing. Of these, 363,000, or 10.1%, were Hispanic. 63,000 of these Hispanic households were elderly. The number of elderly individuals living in assisted housing, not available from this survey, would, of course, be considerably higher.

Keep in mind that these figures are for all Hispanic households living in federally assisted housing. It is exceedingly unlikely that any appreciable number of them would fall outside of the definition of eligibility contained in H.R. 1. That is, the overwhelming majority would have at least one U.S. citizen or national as part of the household.

Households living in assisted housing have been here for years, in order to get in. Most of them, particularly elderly households, have also been living in subsidized housing for a good many years. As long as the housing itself is reasonably viable, elderly people remain until death or illness forces them to leave.

As the members of your committees know only too well, one cannot, in contrast to food stamps, AFDC, unemployment compensation, or Medicaid, simply apply for subsidized housing and be admitted. Almost all housing agencies have waiting lists of several years duration for a very limited number of units. Hispanics and others living in assisted housing have typically waited years to get in.

This fact alone means that, with few exceptions, "ineligible" persons now living in assisted housing would, under any of the proposals currently under serious consideration, be eligible for legalization. How cruel, to proffer legalization with one hand and eviction with the other!

IV. Administrative Difficulties

My comments have focussed on present residents of assisted housing because this is where any requirement for documentation of status, with or without referral to INS, will have its greatest impact. Faced with the need to produce documentation of status and then to wait for years for admission, how many ineligible persons will apply?

There are, in addition, a number of practical difficulties with the SAVE provisions of H.R. 3810. These include the present inadequacy of the INS computer system to generate records, the chilling effect of the requirement on people who may in fact be eligible but who will regard exposing themselves to INS as posing an unacceptible risk, and the administrative burden on housing agencies.

V. Conclusion

In conclusion, we believe that the Section 214 provisions in H.R. 3810 present the Congress with yet another opportunity to make this provision reflect the intent of Congress. We urge that you do so without imposing the cruel hardship of eviction of U.S. citizens or unnecessary and cumbersome administrative burdens on either housing agencies or the INS.

National Governors' Association

Lamar Alexander
Governor of Tennessee
Chairman

Raymond C. Scheppach
Executive Director

STATEMENT OF

ALICIA SMITH
STAFF DIRECTOR
COMMITTEE ON HUMAN RESOURCES
NATIONAL GOVERNORS' ASSOCIATION

before the

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

AND

SELECT COMMITTEE ON AGING

on

THE IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985
(H.R. 3810)

August 6, 1986

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001-1572 · (202) 624-5300

Mr. Chairman, members of the subcommittee, I am pleased to be here today representing the National Governors' Association (NGA).

On behalf of the nation's Governors, I would like to express our appreciation to you and members of the subcommittee for your efforts in addressing the concerns of the states and localities with regard to the federal commitment to community development block grants and various public housing assistance programs. Governors appreciate the work of your subcommittee to provide continued support for housing programs for low-and moderate-income households.

Today, we have come to you for assistance on an equally complex issue -- the immigration reform legislation. We appreciate your subcommittee's effort in taking time to examine and to improve our nation's immigration policy, and we are committed to work with you. In addition, we would like to thank Mr. Frank, Mr. Schumer, and Mr. Morrison for their work with the Judiciary Committee to improve the immigration legislation. Mr. Frank, especially, has done a commendable job in improving provisions in the immigration bill that reduce state's liability for inaccurate eligibility determinations.

Our statement today will focus on the issues you raised with regard to Section 121 of the Immigration Control and Legalization Amendments Act of 1985 (H.R. 3810), which require states to develop a system for verifying the immigration status of individuals applying for federal assistance programs under the aid to families with dependent children (AFDC), the Supplemental Security Income (SSI), unemployment compensation, Medicaid, food stamps, housing assistance, and federal student financial assistance programs. The Immigration and Naturalization Service (INS) has operated this verification program, called SAVE (Systematic Alien Verification for Entitlements) on a pilot basis in selected states and localities.

The state role in administering housing assistance programs varies. In general, federal housing assistance is administered by local jurisdictions unless a community is too small to form a public housing authority in which case a state agency would then administer the federal program. As a result, the verification of immigration status of alien applicants will be performed, in most cases, by local jurisdictions.

We would like to share our experience with SAVE in other state-administered programs with you today. We believe the experience we gained in these pilot projects in states will shed some light on potential implementation problems of SAVE with regard to public housing programs.

As envisioned, SAVE is intended to prevent the payment of entitlement benefits to ineligible alien claimants. INS provides state agencies with computer access to an INS data base called Alien Status Verification Index System. INS automated record terminals are placed in state and local agencies that administer such programs as AFDC, Medicaid, food stamps, and unemployment compensation. Using these terminals, state agencies check applicants' information against the INS data base. If this computer match identifies the alien in a satisfactory alien status, the application is processed under normal agency procedures. If, however, the match reveals an irregularity, either because there is no record of the applicant on the data base or because the record is questionable, the state submits photocopies of documents to INS. INS then verifies the applicant's immigration status. If the applicant is determined by INS to be in an unsatisfactory status, the state denies or terminates entitlement benefits.

The states share the federal government's concern that benefits not be provided to ineligible applicants and welcome efforts by INS to increase state access to data on the status of immigrants. In fact, states with a large number of resident aliens have been interested in SAVE as a means of ensuring that only those who are entitled to benefits receive them. For instance, there are 3 states, Florida, Illinois, and Colorado, that have statewide verification systems. However, initial state experience with SAVE pilot projects have brought to light several aspects of the system that we believe require further refinement prior to mandatory, nationwide implementation.

Lack of Timely and Complete Data

One of the problems of implementing SAVE is that INS data has proved to be incomplete and often inaccurate. According to a statement made by the chief of the index section of INS Office of Information Systems, there are about 6.2 million records that have not been entered into the actual index system, and the backlog is increasing at an average of 1.4 million files a year. A National Science Academy study cited an INS official's estimate that up to 30 percent of the files that should be in the system have been entered incorrectly or not at all. The 1984 INS statistical yearbook also indicates a number of data problems. It stated that information on immigrants is incomplete from fiscal 1980 through 1983 due to missing records. About 23,000 of the naturalization cases' data is missing, which represents 10 percent of the total; and at least 6,600 derivative citizenship cases are not accounted for.

Since 1980, INS has launched an intensive effort to improve its operation through the development and implementation of a new automated data collection system. However, a recent GAO study on INS' computer acquisition recommends cancellation of the INS computer contract due to improper contracting procedures, excessive prices, and bidding irregularities. Two weeks after the release of GAO report in April 1986, INS cancelled its current computer contracts to automate its field offices and headquarters. A new bidding on their contracts will not begin until next year. The result will be several years' delay in computerization of INS records for more than 40 million people falling under the INS supervision.

Incomplete Report on Eligibility Status of Certain Resident Aliens

INS database uses the "A-number" to identify resident aliens, although many alien residents of the U.S. have no A-numbers. For example, many aliens are permanently residing in the U.S. under color of the law (PRUCOL). These aliens are in legally eligible entitlement categories established by the federal statutes and state and federal courts. There are at least 16 PRUCOL categories including:

- conditional entrant,
- parolees,
- aliens under an order of supervision,
- aliens with an indefinite stay of deportation,
- aliens with an indefinite voluntary departure,
- aliens whose visa petition have been approved,
- aliens who have filed for an adjustment of status,
- aliens with a stay of deportation,
- asylees,
- refugees,
- aliens under voluntary departure,
- aliens with deferred action status,
- aliens falling within the registry date (6/30-48),
- aliens with a suspension of deportation,
- aliens with a deportation that has been withheld,
- aliens grant Cuban/Haitian entrant status.

An individual under the various categories above can possess a variety of INS documents revealing their status: I-94, I-220, I-181, I-210, I-551, or I-151, an order from an immigration judge, a letter from an INS office, a passport, or combinations of these. An alien may possess one of several documents that entitled the person to remain in the country, even though he/she entered illegally, and in some cases even receive benefits. This group of individuals in the PRUCOL status create a serious problem for the verification system so long as the primary screening mechanisms is solely the A-number. For example, a consent decree was reached between Illinois and the Mexican American Legal Defense and Education Fund (MALDEF) in Roman-Ramirez, et al. v. Bernardi, et al. concerning the Illinois Unemployment Compensation pilot project for improper denial of unemployment compensation. A subsequent review of files indicated that 10 percent of the aliens referred to INS for further status processing were eligible claimants, and that a number of lawful permanent resident aliens were improperly denied unemployment compensation.

Questionable Cost/Savings Estimates

INS estimated that Project SAVE would result in savings of about $11 billion. This estimate is based on the assumption that aliens participate in entitlement programs at rates equal to their proportion of the entire U.S. population. Using this assumption, INS concludes that 2.5 percent of the applicants for federal entitlement programs are illegal aliens. If this conclusion were true, 60 percent of the INS estimated illegal aliens would be receiving entitlements. However, initial results from various pilot projects indicates a rather low participation rate and questionable benefit savings.

For example, a report on the Florida pilot project shows that the participation rate of ineligible alien claimants in the unemployment compensation program appears to be only 0.2 percent.

The New York pilot project on unemployment compensation indicated that only 0.1 percent of cases sent to INS for verification were considered to be potential problems. Out of the total $1 billion UI benefits New York paid to all claimants, only $51,722 are overpayments made to illegal alien claimants. Citing insignificant savings and unreliable INS data and untimely INS response to information, the New York State Department of Labor discontinued the pilot project.

The Colorado project, which verifies both unemployment compensation and income security programs, reported that only 17 aliens were found ineligible for AFDC, food stamps, and aid to needy disabled and old age pension programs out of a total of 147,000 alien applicants in fiscal 1985. The cost to the state in administering the verification system is about $10,500 a year, not including staff time; and the savings in these three programs was about $3,046.

The Congressional Budget Office (CBO), in its July 15 report to the Judiciary Committee on the costs of implementing the verification system, also raises the concerns about benefit savings. The CBO report states that "these savings are very uncertain. The only tests of the verification system have been for unemployment compensation programs in a few states, where savings were found to be modest."

CBO estimates also raises the concern about INS assumptions on the cost of statewide verification systems. In states with county-administered income security programs, CBO estimates that implementation of a statewide verification system could be even higher. The CBO report also points out the potential problem of adjudication, because the "INS data are out-of-date and incomplete; and this cost cannot be estimated."

Cost-Effectiveness of This System for States That Have Small Illegal Populations

The issue of cost-effectiveness is particularly important in those states that have a relatively small population of alien residents. Estimates provided by the Census Bureau projected the undocumented alien population in 1980 between 2.5 million to 3.5 million. Of this, 80.8 percent were residing in only five states -- California, Florida, Illinois, New York, and Texas. The mandatory verification system may become a costly undertaking for small states, recognizing that there are numerous administering agencies for the various programs involved. Most importantly, the experiences we learned from pilot projects and cost estimates provided by CBO suggest that the cost of administering this computerized verification could well exceed the projected benefit savings.

Sen. Alan Simpson, (R-Wyo.), chairman of Senate Judiciary Committee and chief sponsor of the immigration reform legislation, expressed similar concern about the cost-effectiveness of the system relative to states with small illegal alien populations. In his floor statement during the Senate debate on the immigration bill in November 1985, he questioned "whether all states need it, whether the technology is actually efficient at this time to avoid mistaken denials of assistance benefits and whether all the certain privacy issues have been resolved."

State Vulnerability to Litigation

As a result of Mr. Frank's assistance, Section 121 of the bill does provide certain safeguards to states not to be liable for error rate sanctions in cases of incorrect eligibility determination made based on INS data. However, both states and the federal government are still subject to potential litigation initiated by an individual claimant who believes he/she is entitled to certain benefits.

States are very concerned about recent federal litigation over the SAVE project in Florida, in which a group of Haitians filed a class action suit against both state and federal officials alleging: (1) illegal revocation of employment authorization for these Haitians, which renders them unavailable for work and thus denies unemployment compensation; (2) violations under the Civil Rights Act based on national origin and race discrimination for the differential verification process of Cuban from Haitian nationals; (3) violations of due process under the Administrative Procedure Act (APA) in denial of work authorization; and (4) violations of equal protection under the Fifth and Fourteenth Amendments.

The Florida lawsuit raises concern about the purpose of verification systems. In numerous occasions, INS has assured states that Project SAVE is primarily used to supply information to states in verifying eligibility for benefits. Should the data be used for law enforcement purposes, the ability of the state agency to perform its service delivery function may be compromised.

Suggestions for Improving the Verification System

Mr. Chairman, the states would like to see an accurate and cost-effective verification system instituted to make certain that applicants of federal benefit programs, regardless of their immigration status, would not abuse the system. We look forward to the continued cooperation and assistance of the INS working toward the improvement of Project SAVE. However, until such time as the system is further defined and fully evaluated, and the database problem is thoroughly addressed, a rigid mandatory implementation of this particular verification system in all states may not prove to be effective. Especially at a time our nation is wrestling with budget deficit problems, it seems essential that we carefully evaluate the cost effectiveness of the verification system so that it does not become a cost liability to the federal government.

Waiver Authority to Federal Agencies

Perhaps the best way to address the concerns we all raised is to provide waiver authority to federal agencies that have jurisdictions over these benefit programs in certain cases. Currently, most of the federal income security programs and unemployment compensation systems have already instituted certain eligibility verification requirements and sanction provisions. We would suggest that secretaries of the Departments of Labor, Health and Human Services, Education, Housing and Urban Development, and Agriculture should be permitted to waive the requirements of Section 121, if they can be convinced that the state administering agency has in effect an alternative verification system that is as effective and timely as the required system, or if the costs of administering the required system would exceed the estimated savings in program benefits. These waivers could be determined by program, state, or geographic region, as appropriate.

Mr. Chairman, the waiver provision was suggested by the administration as one of their proposed amendments to the implementation of the SAVE system forwarded to the House Judiciary Committee on June 10, 1986. In fact both Departments of Labor and Health and Human Services testified before the Ways and Means Committee supporting waiver authority.

GAO Study

Given the concerns addressed by states with regard to the implementation of SAVE., a study of the current INS pilot projects in states conducted by the General Accounting Office would be very useful to provide recommendations for needed changes prior to the implementation of the verification system in all states.

In conclusion, given the number of issues still unresolved in the SAVE program, the Governors have serious reservations about the imposition of a mandate that all states implement SAVE.

Mr. Chairman, it might be useful for you to know that the Committees on Education and Labor, Energy and Commerce, Ways and Means, and Agriculture all have adopted provisions of waiver authority and a GAO study as their committee amendments to the immigration bill.

Mr. Chairman and members of this committee, states need your guidance and assistance to wrestle with this complex issue. I hope that today I have been able to clarify the Governors' concerns on these issues we believe require careful consideration by your committee. I look forward to working closely with you and your staff as the immigration reform debate continues.

Thank you.

JOINT HEARING
HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
AND
SELECT COMMITTEE ON AGING

AUGUST 6, 1986

TESTIMONY OF ROBERT A. WILLIAMS
FLORIDA RURAL LEGAL SERVICES

INTRODUCTION

Thank you for inviting me to testify before this committee. My name is Robert A. Williams. I am an attorney employed by Florida Rural Legal Services in Immokalee, Florida.

I am currently representing hundreds of Haitian immigrants who were improperly denied unemployment benefits because of the SAVE program in a class suit which is pending in the United States District Court in Miami. I would like to share with you today the background of that lawsuit and what lessons can be learned from the Florida experience which may be useful in considering the expansion of the SAVE program as proposed in the pending legislation.

I wish to make it clear at the outset that I have no problem with entitlement agencies enforcing their own eligibility requirements which may exclude illegal aliens from receiving benefits. However, I believe that the savings projected for the SAVE program have been greatly exaggerated, and that costs both to the agencies and to persons wrongfully denied benefits have been seriously underestimated. Furthermore, there is potential for serious abuse inherent in the program which I think is well illustrated by what happened in Florida.

THE SAVE PROGRAM IN FLORIDA

The SAVE program was initiated in Florida in the fall of 1984 following a meeting between Governor Graham and Commissioner Nelson. Florida authorities were assured by the INS that the program would save millions of dollars. The main focus of SAVE in Florida was to be the unemployment compensation system administered by the Florida Department of Labor and Employment Security. Under the federal Unemployment Tax Act, unemployment benefits cannot be paid to aliens unless at the time they earned wage credits they were (1) permanent resident aliens (2) permanently residing in the U.S. under color of law or (3) otherwise authorized to work by the INS. In addition, Florida has adopted the position that aliens who do not have employment authorization are not "able and available" for work and thus ineligible for benefits.

Although some State officials questioned the potential savings, it was decided to implement the program on an experimental basis in the Miami and Ft. Lauderdale area.

Memos we have received from the INS during discovery show that the Florida SAVE project was a high priority for the INS. It was thought that an impressive showing in Florida would help to "sell" the program to other states and agencies. Apparently, the District offices of INS have been given quotas to demonstrate savings from entitlement programs by denying benefits to illegal aliens.

As I am sure you are aware, Florida has an unusually large number of aliens who have legal status but who are not permanent residents. There are approximately 30,000 Cubans who have not applied for adjustment and 20,000 Haitians who are in the category of Cuban/Haitian entrants. In many cases, their I-94 entry document does not show current work authorization, although INS acknowledges that all Cuban/Haitian entrants have current work authorization. In addition, there are about 1800 Haitians who were released from detention as a result of Judge Spellman's decision in Jean v. Nelson and are in valid parole status. There are also about 12,000 Haitians who entered the U.S. between October 10, 1980 and June 29, 1982 who were paroled into the United States so that they might apply for political asylum. They also were issued I-94s showing employment authorization. In addition to these groups, there are also thousands of Nicaraguan refugees who have applied for asylum.

None of these individuals' current immigration status is shown by the INS computer. If you check their alien number through the computer, the computer screen directs you to initiate "secondary verification." "Secondary verification" means that a caseworker photocopies the document presented by the alien and sends it to the INS in Miami where an INS employee attempts to locate the alien's file and prepares a written determination.

By the fall of 1984, the program was well underway. Almost immediately its effects were felt in the Haitian community. All Haitian claims were referred for secondary verification. Although some Haitian claimants displayed I-94s that showed valid work authorization, INS told the State they were not authorized to work. When the State subsequently determined that the individuals were actually authorized to work, the INS told the State that it felt that the work authorizations had been improperly granted, but in the future it would revoke the work authorizations before informing the State that the individual did not have work authorization.

Thus, a program which was supposed to identify illegal aliens was redirected to deny benefits to persons who were in fact eligible for benefits on the day that they applied. When Haitians were referred for secondary verification the INS sent them a letter revoking their work authorizations immediately. This procedure was contrary to INS's own rules which provide that prior to revocation, the INS must give 15 days notice of intent to revoke and an opportunity for the alien to present reasons why his work authorization should not be revoked. INS subsequently admitted to State authorities that the revocations did not comply with its own regulations but decided to continue the practice because it was more convenient for the agencies.

In this way, hundreds if not thousands of Haitians were disqualified for benefits. Others were disqualified simply because INS could not find their files. Many files have been lost in the Miami district. When these individuals applied for benefits, instead of admitting that the file was lost, the INS informed the State that it had no record of the individual and that he was not employment authorized. In one case, a Haitian went to INS, showed them his I-94, obtained a written verification of his status which he then gave to the State authorities who sent it back to INS and still INS responded they had no record of the individual and he was not work authorized.

In January of 1985 a freeze severely damaged crops throughout Florida and President Reagan issued a Disaster declaration.

Thousands of farmworkers, including many Haitians were unemployed. The INS saw this as its big opportunity to prove the value of the SAVE program. They estimated that the Disaster Assistance program would run to forty million dollars and projected that the savings due to the SAVE program would be between ten and twenty million dollars. INS hoped that this would be "the final blow in bringing the heads of the various entitlement agencies in the State of Florida, who to date, [had] been reluctant to cooperate with the Immigration Service, around to [the INS] side of the table."

As with most of its estimates, the projected ten to twenty million dollar savings was grossly inaccurate. In fact, the final INS memorandum on the disaster program estimated that the savings were about $103,000 and that only about 3.6% of the aliens checked were found ineligible. It now appears that most of those disqualified were Haitians whose work authorizations were illegally revoked.

Not all aliens, however, received the same treatment. By letter dated October 11, 1985, the INS instructed the State authorities to ignore the computer instructions to initiate secondary verification for Cuban nationals.

The Haitians found they had little administrative recourse. There is no administrative appeal from the decision of the District Director to revoke work authorizations. Dozens of appeals were filed with the Division of Unemployment; however, the Florida Department of Labor's position was that the INS's determinations could not be challenged in an unemployment compensation appeal.

On April 15, 1986, a Florida appellate court ruled that where "INS denies or revokes an alien's work authorization effectively rendering him ineligible for governmental benefits to which he may otherwise be entitled, even if the action is unlawful, the INS determination is binding on the states and can be assailed only before a federal agency or in federal court." Shortly thereafter, we filed our action in the federal district court. That litigation is still pending, however, the government has acknowledged that the work authorizations were improperly revoked and is attempting to reinstate the work authorizations retroactively. Unfortunately, the INS now says that it cannot identify all the people whose work authorizations were improperly revoked. To date, approximately 660 work authorizations have been reinstated. The State in turn has had to reopen hundreds of cases and redetermine these claims. It is very likely that many of those who were wrongfully denied because of the information provided by the INS will never receive the benefits to which they were entitled.

What is the final balance sheet on SAVE? During the period for which we have records from October 1985 through May 1986, over 200,000 people filed claims for unemployment compensation. A total of 456 were disqualified for unemployment benefits because of alien status. It is our understanding that of the 456, 348 were disqualified because INS improperly revoked their work authorization leaving the number actually disqualified as 107, or less than .05 percent of the total number of claimants. Even this overstates the savings, since at least 55 of those determinations did not result from INS data but were based on the claimant's admission or other information received by the Department of Labor. This is the benefit. What were the costs? The costs to the State were substantial, $119,000 were budgeted for the first year of operation. More than 75% of this was for labor costs. One assumes that the INS had similar costs. Not counted are the hours wasted by appeals referees, the

Unemployment Appeals Commission, and the District Court of Appeals in reviewing these cases or the costs and attorneys fees of the present litigation.

Of course, the greatest costs were incurred by the hundreds of Haitian claimants who were denied unemployment compensation at the time when they most needed it. It is hard to put price on being evicted or going hungry or not being able to afford medicine for one's children. Moreover, the entire Haitian community has become hesitant to file for unemployment. Wide spread local publicity and the grapevine have created fears that filing a claim for benefits could result in revocation of employment authorization or other adverse action by INS.

I don't see how one can look at the Florida program which was supposed to be a model for the rest of the country and reach any other conclusion than it has been a complete failure. I think there are several lessons to be learned from this experience.

INFLATED ESTIMATES OF POTENTIAL SAVINGS

First, the INS has consistently exaggerated the potential savings which might be generated by the SAVE program. Initially the INS based its estimates on the assumptions that 2.5% of the population of the United States are illegal aliens and that illegal aliens apply for benefits at a rate similar to the general population. Thus, according to the INS 2.5% of all benefits paid in the U.S. were going to illegal aliens. This estimate is ludicrous. My experience over the past ten years in a small farmworker community where there are many undocumented aliens, is that undocumented aliens rarely if ever apply for public assistance other than perhaps emergency medical care. I think that is partly because they fear detection, partly because the majority of undocumented are single males who are ineligible for many benefits anyway, and also simply because they know they are not eligible for benefits and don't want what they are not entitled to.

It appears that projections made by the INS of savings in Florida were based on the experience with a limited number of cases which were referred to the INS at the outset of the program. One suspects that they were cases where the agencies themselves thought that the applicant was an illegal alien; when the INS found that 26% of these referrals were ineligible for the benefits sought, it reached the erroneous conclusion that 26% of all aliens were ineligible for benefits. Once, screening of all claims was initiated, the percentage found ineligible dropped dramatically.

It also appears that INS estimates of the savings generated differ significantly from the State estimates because of faulty understanding of the nature of unemployment insurance. The Florida Unemployment officials estimate savings by the average weekly payment multiplied by the average number of weeks unemployment benefits are paid. Although that number fluctuates through the year, it is around $1300. Again, that number, in my opinion, overestimates the savings because most illegals are working in low paying jobs where the weekly benefit amount would be less than the average. However, INS takes the weekly average benefit of $107 and multiplies it by 52 weeks to come up with a savings of $5600 per alien. These estimates are simply fraudulent.

Another erroneous assumption made by INS in projecting savings due to SAVE is that the entitlement agencies have done absolutely nothing to enforce restrictions on paying benefits to aliens, and that but for SAVE, the benefits in question would have been paid.

I was particularly interested in how INS has claimed savings as a result of the decision in Berger v. Califano, in which a federal court ruled that thousands of aliens had been improperly denied SSI benefits and ordered the Social Security Administration to undertake a review of those denied because of alien status. The Social Security Administration has referred these cases to the INS for review. Although in all of these cases the Social Security Administration has already denied the alien's claim, INS is claiming that the cases in which it finds that the denial was proper represent savings due to Project SAVE.

UNDERESTIMATED COSTS

While INS has exaggerated the savings, it has consistently underestimated the costs of the program, both in time and money. This program has been sold to the States and Congress as a "computer verification system." I am sure that sounds attractive to many entitlement agencies faced with difficult decisions regarding the immigration status of alien applicants for benefits: a computer system that would instantaneously provide accurate up-to-date information. But that is not what you get under Project SAVE. Instead, as the Florida experience shows, roughly 50% of the time you are simply plugged into the INS's antiquated manual records system, a system in which thousands of files are lost or misplaced. Determinations have to be held pending while the entitlement agency waits for an INS manual search and response.

In our case, we have discussed with the government updating the computer to show the thousands of aliens in South Florida who are permanently residing in the United States under color of law and therefore eligible for many federal benefits programs. The government has acknowledged that this would be desirable; however, it isn't sure that it is feasible because of the manpower that would be required to transfer the information from the files to the computer. This is one of the unstated costs of the SAVE program; continually updating the computer system is an expensive undertaking. If it is not updated, then eligibile aliens pay the cost in having determinations in their cases delayed while INS searches for their file. Until INS has an accurate reliable automated system, it seems to me to be premature to greatly expand this program.

THE POTENTIAL FOR ABUSE

The potential for abuse inherent in the SAVE program should be evident. Low level INS officials are put under pressure from their superiors to generate savings which may not actually exist. The people whose claims are being reviewed are new immigrants who may be unfamiliar with their rights under the various benefit programs and afraid to challenge the INS. The INS determinations are generally non-reviewable while the government entitlement agencies accept the word of INS as conclusive proof of an alien's status. Moreover, INS officials are not held accountable if the information they furnish is erroneous. These problems are only compounded when the aliens affected belong to a group such as the Haitians in South Florida who have repeatedly been the victims of discriminatory conduct by INS in the past.

PROPOSED SOLUTIONS

If the INS is to continue to implement Project SAVE, then I think it essential that statutory safeguards be enacted to prevent a repetition of what occurred in Florida.

First of all, Congress should require that any alien verification system be implemented in a manner that provides for verification of immigration status without regard to sex, color, race religion, or national origin.

Second, Congress should insist that the alien verification system not be used by INS for administrative, noncriminal immigration enforcement purposes.

Third, the protections of the Privacy Act should be extended to aliens permanently residing in the United States under color of law. The Privacy Act, 5 U.S.C. §552a, recognized the harm to the individual that can result from the misuse of governmental information systems and provided certain procedural safeguards, including the right of an individual to gain access to his records and correct or amend records which are erroneous. Further, the Act requires agencies disseminating information regarding individuals to take steps to insure that the information is current and accurate for its intended use. However, the Act defines "individual" as "a citizen of the United States or an alien lawfully admitted for permanent residence" and therefore does not offer any protections to the groups most likely to be affected by the SAVE program. A proposed amendment is attached as Exhibit "A".

Finally, I would recommend that participation in the SAVE program should remain optional with the various agencies. Clearly, there are significant differences in the extent to which various entitlement programs are being utilized by aliens and there are significant differences from State to State. In view of the significant costs of the program and concerns about the way in which it has operated to date, I think each agency should be allowed to evaluate the costs and benefits of participation for itself.

Respectfully submitted,

ROBERT A. WILLIAMS

Exhibit "A"

That Section 552a(a)(1) of Title 5, United States Code is amended to read as follows:

> "(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence or an alien permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act)

STATEMENT

OF

GILBERT PAUL CARRASCO, CHAIR
LEGAL ISSUES COMMITTEE, HISPANIC NATIONAL BAR ASSOCIATION

BEFORE THE

SELECT COMMITTEE ON AGING

AND THE

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
OF THE
COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS

U.S HOUSE OF REPRESENTATIVES

ON

H.R. 3810
THE IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT

AUGUST 6, 1986

Chairmen Gonzalez and Roybal, and distinguished Members of the Subcommittee on Housing and Community Development and of the Select Committee on Aging, on behalf of the Hispanic National Bar Association, I want to thank you for the opportunity to present our views on H.R. 3810, the Immigration Control and Legalization Amendments Act.

The Hispanic National Bar Association is comprised of thousands of lawyers in 31 states and has affiliates throughout the country. The pending immigration legislation is of the utmost concern to us, and we would, therefore, like to recognize and commend these Committees for the full consideration that is being given to critical aspects of this bill.

I. THE BILL AS A WHOLE

Although there are aspects of this legislation that we embrace, we do not believe that the positive elements outweigh the harm that would result if the bill were enacted into law. For those who have been contributing members of our society, legalization, we agree, is the appropriate legislative response.

On the other hand, for those who would not attain legal immigration status under the proposed legislation, whether it be due to fear of coming forward, technical ineligibility, or otherwise, a permanent underclass of destitute people would inevitably be created. In 1980, in presenting the position of the Civil Rights and Civil Divisions of the United States Department of Justice, I submitted a memorandum on the employer sanctions proposal to the Select Commission on Immigration and Refugee Policy, Task Force on Work Eligibility. That position, which I believe holds true today, maintains that the predictable inefficacy of employer sanctions would mean that "our immigration policy would not see any improvement, and would, in fact, foster the many societal problems generally attributable to irremediable poverty. Without any possibility of sustenance from either the private or public sector, concomitant problems of poverty, such as starvation, disease, and crime could result." Memorandum from Acting Assistant Attorney General James P. Turner, Civil Rights Division, to Joan Loeff, Chair, Task Force on Work Eligibility, Select Commission on Immigration and Refugee Policy, at 2 (October 20, 1980). These consequences would be even more likely if the systematic alien verification for entitlements proposal were to be enacted.

Because of the many foreseeable problems attendant to addressing immigration through domestic law (as opposed to border enforcement or through foreign policy), therefore, we cannot endorse H.R. 3810. If consensus emerges, however, that some version of this legislation must be enacted, we recommend that it include equitable legalization, strong protections against discrimination and exploitation, and a two-year sunset provision.

II. THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

The so called SAVE Amendment to H.R. 3810 is, in our opinion, an unwise measure on three grounds. First, it would foster unnecessary and potentially abusive interrogation by employees of State and local agencies. Second, it would sanction undue reliance on information systems of the Immigration and Naturalization Service that are not sufficiently accurate or current, thereby jeopardizing the provision of public benefits to those who are lawfully entitled to receive them. Third, accessibility and use of personal information that was acquired and collated for particular purposes, but which is now proposed to be shared between agencies of the federal government and with agencies of state and local governments for expanded purposes necessarily implicates the rights of privacy. It is a substantial step toward a national data bank.

A. Discrimination

Just as the employer sanctions provision of the bill would involve private employers in reviewing legal documents and assessing eligibility, the SAVE proposal would result in employees of State and local governments in similar reviews of legal documents. Inquiries beyond a request to sign applications under penalty of perjury by employees of State and local agencies are likely to lead to discriminatory application and would result in requests for such documents from U.S. citizen minority applicants for benefits, even though the amendment does not require it for citizens and nationals. If such discrimination did ensue, it is not clear that, even with Mr. Rodino's non-discrimination amendment, a private right of action exists or whether a remedy exists for violation of that provision.

B. Unreliability of Immigration and Naturalization Service Data

The second aspect of SAVE that raises substantial question is the deference it gives to I.N.S. data. The frequency with which files are lost or misplaced by I.N.S. is well known to immigration lawyers. Indeed, the evidence is overwhelming that I.N.S. data are consistently inaccurate or out of date. Indeed, the House Committee on Government Operations, in its October 17, 1980 report on Immigration and Naturalization Service Records Management Problems, made several telling findings , at p. 4.

- I.N.S. is not answering its mail as quickly as it should partly because of poor use of form letters, partly because of poorly trained employees.
- I.N.S.'s manual handling of records is a clear case of the organizational left hand's not knowing generally what the right hand is doing, particularly because the few directives for recordkeeping are not enforced.
- I.N.S. is all too indulgent in allowing district offices to delay responding to the biweekly circular for missing files, if indeed the offices respond at all.
- For years, I.N.S. has neglected its manual recordkeeping and has continued to do so even more to its detriment during its recent attempts to automate records.
- Computers are useful tools in recordkeeping. But in its rush to automate I.N.S. put tracking systems on line without sufficient planning for the amount of work that they would be called upon to perform.
- Improvements in recordkeeping that are attributed to automation may in fact result from additional staffing, such as a 150 percent increase in the Houston District Office's records room, and evaluations must clearly distinguish between the two.

This situation has not changed markedly and, indeed, seems to be getting worse. As directing attorney of the National Center for Immigrants' Rights in Los Angeles, last year I was lead counsel in a nationwide class action which established various rights to due process of law for immigrant children. In the course of that litigation, which is styled Perez-Funes v. Immigration and Naturalization Service and is reported at 619 F. Supp. 656 (C.D. Cal.), we sought information from the I.N.S. with respect to members of the plaintiff class. In response to that discovery request, the defendants submitted a declaration, dated March 18, 1985 and signed by Harlin M. Keister, Jr., the Chief of the Index System Section of the I.N.S. Office of Information Systems. Mr. Keister declared:

> Even if the Government were to modify the program to retrieve this type of information, the data generated by such would be erroneous and misleading. William J. Polli, Chief, Records Operations Section, Records Management Branch, I.N.S., has informed me that there are currently 6.2 million records that have not been entered into the system. This backlog has been increasing steadily since 1979. Even with his personnel attempting to key in the current information, along with a small amount of the backlog, they are unable to keep pace with the current records which are received at a rate of approximately 1.4 million per year. Therefore, even if the program were modified, there is no time frame which contains complete records and any search would yield inaccurate statistics.

A significant shortcoming of the proposed SAVE program is its substantial reliance on the I.N.S. computer data base.

The experience of the pilot projects with the SAVE program is further evidence that this is not a proposal that should be adopted. Commissioner Turner of the Washington State Employment Security Department, in a letter to Congressman Chandler dated February 24, 1986, writes, "Based on my Department's experience with the SAVE concept, I am compelled to point out that there are significant problems with the timeliness and completeness of I.N.S. available information and that the costs of the system appear to far outweigh the beneifts."

Similarly, Lillian Roberts, Commissioner of Labor for the State of New York, in a February 7, 1986 letter to the Interstate Conference of Employment Security Agencies made the following findings regarding the pilot project there:

> The I.N.S. computer files in Washington are unreliable. Many individuals granted special status such as political refugees from Cuba, Hungary, Poland, etc. were not in the computer files. In addition, the files in Washington did not show records of some individuals admitted over 30 years ago. In nearly every instance the I.N.S. district office provided information opposite of that furnished by the I.N.S. in Washington.
>
> There was a great deal of trauma created among aliens legally admitted to the United States when they were advised of the data reported by I.N.S. in Washington. Many claimants were frightened and became quite upset. This had a further unsettling effect on operations in the local office.
>
> I.N.S. response to information was not timely.

The pilot projects, therefore, indicate that the SAVE program has not produced the desired results and has created more problems than it has solved.

C. The Right of Privacy

Burdens on the agencies involved are not the only problems. Litigation and the costs attendant thereto have also arisen, and more is sure to follow if SAVE is implemented nationwide.

Apart from the problems of discrimination and due process, we also have substantial concerns about compromises to the right of privacy. In the Justice Department memorandum to which I referred earlier, in addition to the legal objections that were raised with respect to employer sanctions, the national identity system then being considered by the Select Commission was also addressed. The Civil Rights Division voiced its concern that "Because employment relationships under a work eligibility system would entail the collation of personal data by the government with potential expansion of the type of data requested and purposes for which they are used, objections based on the fundamental Constitutional rights of privacy, liberty, and association may arise. These rights, jeopardized in this context, find their locus primarily in the First and Ninth amendments."

Such concerns would be heightened by the sharing of information with other federal, State, and local agencies that would use information for purposes other than those for which such information was submitted, obtained, or intended. In 1977 the Privacy Protection Study Commission, established by Congress, submitted its report to the President, in which it stated at page 617:

> Actual or potential information abuses are much more likely to result from continuing growth in the government's appetite for information about individuals and in the use of that information for growing numbers and types of purposes. The real danger is the gradual erosion of individual liberties through the automation, integration, and inter-connection of many small, separate recordkeeping systems, each of which alone may seem innocuous, even benevolent, and wholly justifiable. Dramatic developments in computer and communications technology, which both facilitate recordkeeping functions previously performed manually and provide the impetus and means to devise new ones, can only exacerbate this problem. **(Emphasis in original).**

Although Mr. Rodino has offered an amendment that provides that SAVE "shall not be used by the Immigration and Naturalization Service for Administrative (non-criminal) immigration enforcement purposes," given the previous problems with maintenance of information by the I.N.S. that we have reviewed, it does not seem clear that I.N.S. would take adequate measures to segregate information obtained through the SAVE program from its enforcement information data base.

Furthermore, what is the remedy for violation of this provision? Is the evidence to be excluded at deportation hearings? Would this be a statutory exception to the U.S. Supreme Court case of Lopez-Mendoza v. I.N.S., 104 S. Ct. 3479 (1984), which holds that evidence obtained through violation of Constitutional rights can be used in deporation hearings? Cf., Arguelles-Vasquez v. Immigration and Naturalization Service, 786 F. 2d 1933 (9th Cir. 1986).

There is yet another problem with the SAVE program in that it requires forwarding of documents to I.N.S. in certain contexts to ascertain whether the applicant is in a satisfactory immigration status. However, persons known by I.N.S. to be in the U.S. but whom I.N.S. has not taken any steps to arrest or deport are said to be "permanently residing here under color of law,"see Holley v. Lavine, 553 F. 2d 8456 (2d Cir. 1977, cert. denied, 435 U.S. 947 (1978). Even though in many States in a variety of public benefits programs, they are thereby presently deemed eligible for such benefits, under the SAVE amendment I.N.S would not acknowledge such persons to be in a "satisfactory immigration status." Thus, by denying such certification upon request by a State or local agency, the I.N.S.would, in effect, be enforcing the immigration laws.

This is not by any means to argue against Mr. Rodino's amendment; on the contrary, the amendment is a recognition of privacy rights. It is to say , however, that the scheme of SAVE as a whole raises serious concerns that have not been adequately resolved.

On the wisdom of SAVE, I find myself in agreement with the conclusion of Senator Simpson that may be found on S. 11415 of the Congressional Record, September 13, 1985:

> My serious questions about the program are really these: Whether all states need it, whether the technology is actually efficient at this time to avoid mistaken denials of assistance benefits, and whether all the certain privacy issues have been resolved.
>
> At this point in the debate, on this issue with this project, I will not vote in favor of the amendment and will resist it.

III. PARTICULAR CONCERNS RELATED TO HOUSING

Unlike the entitlement programs encompassed by the SAVE amendment, which all relate to benefits for individuals, housing assistance is available to families or households. The SAVE program as proposed does not address the question of eligibility for families having members who would be clearly eligible as citizens if they lived alone but whose members also include someone who is not "in a satisfactory immigration status."

Co-counsel and I have raised a similar issue in a nationwide class action that challenges regulations of the U.S. Department of Housing and Urban Development, 51 Fed. Reg. 11198 (April 1, 1986), that were due to go into effect on July 30 of this year. At the request of this Subcommittee, HUD has agreed to postpone the effective date of the regulation "to September 30, 1986..[to] provide ample time for Congress to address the issue in new housing legislation, or for it to become clear that no amendment will be forthcoming." Letters dated July 23, 1986 from Samuel R. Pierce, Jr., Secretary of Housing and Urban Development, to Henry B. Gonzalez, Chairman, and Stewart B. McKinney, Ranking Minority Member, Subcommittee on Housing and Community Development, Committee on Banking, Finance, and Urban Affairs.

The litigation is styled Yolano-Donnelly Tenant Association v. Pierce and is pending in United States District Court for the Eastern District of California. We feel that both the HUD regulations at issue in the litigation and the SAVE program as it applies to public housing are unconstitutional to the extent that they deny housing assistance to otherwise eligible applicants for such assistance solely on the basis that they are related to and live with members of their family who are not in a satisfactory immigration status. Both of these schemes, in our view, violate due process of law and the familial right of privacy, as protected by the Fifth and Ninth amendments to the Constitution. Moore v. City of East Cleveland, 431 U.S. 494 (1977); Griswold v. Connecticut, 381 U.S. 479 (1965). The HUD regulations have further procedural defects beyond these Constitutional problems.

Furthermore, if the aged, who form a very substantial percentage of those who receive housing assistance, were required to prove satisfactory immigration status, many eligible persons would be denied such assistance. Those who have been living here for most of their lives who are eligible to adjust their status but never have, would see their homes jeopardized for failure to possess satisfactory evidence of legal immigration status. This was recognized in the Roybal/Dornan amendment to H.R. 4746 (substitute to H.R. 1), the Housing Act of 1986, which exempts elderly non-citizens from full compliance with the certification and documentation requirements of that legislation.

The problems of the aged would extend beyond the context of housing. Their difficulty in locating or obtaining sufficient documentation would be just as great in the context of all public entitlement programs.

IV. CONCLUSION

We would strongly recommend that the SAVE proposals under consideration be rejected. Amendments to the SAVE program recognize potential problems of discrimination and use of data for immigration law enforcement, but the protections included in the amendments are inadequate.

The I.N.S. has a long and continuing history of mismanagement of records, and any system that would rely on them for determinations that impact so directly on necessities of survival, is very likely to impact adversely on deserving, eligible applicants for public benefits. Moreover, fundamental rights of privacy, property, and liberty would be seriously compromised through such a system. We recommend that the systematic alien verification for entitlements proposal be abandoned.

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HISPANIC NATIONAL BAR ASSOCIATION

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May 28, 1986

U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 3810, S. 1200 (Immigration Legislation)

My dear Representative:

On behalf of thousands of Hispanic lawyers in 31 States who are members of the Hispanic National Bar Association, we write to express our grave concern regarding the pending immigration legislation. We believe that the new bill, like the others, would result in discrimination against minorities who speak with an accent or who "look foreign," through the implementation of the employer sanctions program. This aspect of the bill is further objectionable in that it involves private citizens in immigration law enforcement.

Because discrimination is so apparently predictable and due to the proven ineffectiveness of such measures in the European countries that have enacted them, if Congress insists on including employer sanctions in immigration legislation, a two-year sunset provision should be attached thereto. The Frank Amendment, without dilution of its present form, is an absolutely essential concomitant of any legislation that includes employer sanctions.

As you know, the immigration laws are very complex. Therefore, it would also, in our view, be highly inadvisable to enforce these laws through local law enforcement agencies, as the INS' recently drafted version of the bill proposes. Only the federal agency charged with the enforcement of immigration law has the requisite expertise to do so.

We also have serious concerns about the process attendant to a legalization program, whether for agricultural workers or otherwise. Sworn declarations are good evidence in our courts of law, including those submitted by undocumented persons. It would certainly be inconsistent with this longstanding body of jurisprudence to deny the validity of declarations for the purpose of establishing continuous residence here. As a practical matter, it would make the proposed legalization program unworkable.

Lastly, we strongly oppose the establishment of any guest worker program that would render a segment of the population vulnerable to exploitation and exempt from the full protection of our law.

The history of this country's immigration laws is not something of which we as Americans are proud. As we near the unveiling of the Statue of Liberty and the celebration of this nation's independence, we urge you to consider the necessity of bringing fairness to the manner in which we treat immigrants. After all, the Founders were all immigrants themselves.

Sincerely,

Robert G. Mendez
President

Gilbert Paul Carrasco
Chair, Legal Issues Committee

TESTIMONY ON THE IMMIGRATION CONTROL
LEGALIZATION AMENDMENTS ACT OF 1985
(H.R. 3810)

Presented By:

Charles Kamasaki
Director of Policy Analysis

On Behalf Of:

Raul Yzaguirre
President

NATIONAL COUNCIL OF LA RAZA
Twenty F Street, N.W.
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Before:

Subcommittee on Housing and Community Development
Committee on Banking, Finance and Urban Affairs
Hon. Henry B. Gonzalez, Chairman

and

Select Committee on Aging
Hon. Edward R. Roybal, Chairman

August 6, 1986

NATIONAL COUNCIL OF
LA RAZA

STATEMENT OF CHARLES KAMASAKI
DIRECTOR OF POLICY ANALYSIS
NATIONAL COUNCIL OF LA RAZA

I. INTRODUCTION

My name is Charles Kamasaki, and I am Director of Policy Analysis for the National Council of La Raza. The Council is a national Washington, D.C.-based organization dedicated to improving life opportunities for Hispanics in the United States. The Council's constituency includes about 80 affiliated organizations located in 19 states and the District of Columbia, who together serve approximately one million Hispanics.

I would like to express the National Council's appreciation to both Chairman Gonzalez and Chairman Roybal for giving us the opportunity to present our views on an issue of great importance to the Hispanic community: the Systematic Alien Verification for Entitlements (SAVE) provisions of the Immigration Control and Legalization Amendments Act of 1985 (H.R. 3810). Both Chairman Gonzalez and Chairman Roybal are intimately familiar with the problems posed by alien verification proposals such as SAVE and the regulations recently issued by the Department of Housing and Urban Development (HUD). We greatly appreciate the efforts of both Mr. Gonzalez and Mr. Roybal in removing the most onerous aspects of the HUD regulations during House consideration of H.R. 1, and look forward to working closely with you to ensure that the protections included in the House bill are enacted into law.

On grounds that will be fully explained below, the National Council opposes those provisions of H.R. 3810 which would mandate nationwide implementation of SAVE, and urges the Banking Committee to take our position into account when considering possible amendments to the immigration bill as reported out of the Judiciary Committee.

II. IMMIGRATION AND NATURALIZATION SERVICE (INS) SAVE PROGRAM

The SAVE Program is an information-sharing system designed to allow state and local entitlement agencies access to INS automated file systems for the purpose of verifying the eligibility of noncitizen applicants for various public entitlement benefits. Currently, several states are operating pilot SAVE projects. In all but one case, pilot projects are limited to screening applicants for Unemployment Compensation benefits. The exception is Colorado, where the SAVE system is used statewide for all major entitlement programs.

The House immigration bill, H.R. 3810, would mandate nationwide implementation of the SAVE Program under the Aid for Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Unemployment Compensation, Medicaid, Food Stamps, federal student financial assistance, and assisted housing programs.

The National Council fully supports the purpose of SAVE, i.e., that only those individuals who are legally entitled to public entitlement benefits should receive them. However, after extensive research on and analysis of current INS SAVE operations, the National Council feels that mandatory nationwide implementation of the system now would be unwise. We therefore oppose the SAVE provisions of H.R. 3810 on four grounds.

A. The System Has Not Been Adequately Tested

Although H.R. 3810 in its current form would dramatically expand INS SAVE operations, no hearings on the program have been held by the Judiciary Committee. Free-standing legislation, introduced last year by Representative Thomas Petri (R-WI), which would also mandate nationwide implementation, has not received a single hearing. In fact, this is the first Congressional hearing which has focused exclusively or primarily on the SAVE program.

In addition, no in-depth analyses of SAVE operations from independent sources have been available for Congressional review. Judiciary Committee Chairman Peter Rodino, chief sponsor of H.R. 3810, has requested a full report on SAVE operations in Florida from the Attorney General, and to date has received no response. Nine members of Congress have requested a full review of the implications of expansion of SAVE from the Office of Technology Assessment (OTA), and have not received a complete response. Finally, the Inspector General's Office of the Department of Health and Human Services (HHS) reportedly completed a major analysis of the SAVE system several months ago; however, that report has not been made available to Congress.

Given the central role that SAVE plays in determination of eligibility for a wide array of public entitlement benefits and the dramatic expansion of the program provided in H.R. 3810, the National Council believes that Congressional review of the system to date has been inadequate.

Senator Alan Simpson, Chairman of the Senate Immigration Subcommittee and chief sponsor of immigration reform legislation in the Senate, noted this lack of thorough review during floor debate on S. 1200 last year when he asked "whether all states need it, whether the technology is actually efficient at this time to avoid mistaken denials of assistance benefits, and whether all the certain privacy issues have been resolved."

B. INS Data Systems Upon Which SAVE Relies Are Incomplete and Inaccurate

SAVE is an information-sharing program with a very important function and may, as provided under the immigration bill, have a significant impact on tens of thousands of individuals. It is used to determine whether persons will or will not receive entitlement benefits or other federal financial assistance. The fairness and effectiveness of SAVE depend upon the integrity of INS automated file systems; an eligible alien must be "on file" in the INS system -- on computer or on paper -- in order for the system to work. Overwhelming evidence exposes three crucial problems with the system's accuracy and completeness. These are:

- Experts inside the INS have reported vast gaps in the Service's computerized data bases. A National Academy of Sciences study released in 1985 cited one INS official who estimated that up to 30 percent of the files that should be in the system are either missing or have been entered incorrectly. In addition, the chief of INS Records Operations has stated that 6.2 million records have not been entered into the central index system, and that this backlog is increasing.

- There exists a large class of aliens who are legally entitled to certain public entitlement benefits and who are not found in INS records systems. These aliens, described as permanently residing under color of law (PRUCOL), include conditional entrants, parolees, and aliens under voluntary departure. Recent experience with SAVE in Florida pilot projects has demonstrated that in many cases the INS has no information in its file systems on PRUCOL aliens.

- Although the INS has undertaken sustained efforts to increase automation of its file systems, progress in this area has been stopped by a recent General Accounting Office (GAO) report which, after finding major improprieties in INS equipment procurement procedures, recommended that the Service cancel its new contract. The INS has since cancelled its contract and, according to a recent article in the New York Times, "the action...appears likely to set back for several years a long-delayed effort to establish computerized files on more than 40 million people."

As a result of these limitations, the status of thousands of aliens now in this country who are legally eligible for certain public assistance benefits cannot be effectively verified through the SAVE system. Nationwide implementation could lead to their being denied benefits unlawfully.

C. The SAVE System Is Not Cost-Effective

In 1985, when INS Commissioner Alan Nelson announced a major effort to expand SAVE operations throughout the country by way of voluntary agreements between the agency and state and local governments, he estimated that, if implemented nationwide, SAVE would bring about cost savings of approximately $11 billion. These figures became the major rationale for using the system, and were referenced in support of amendments mandating nationwide implementation which were adopted by the Senate last year. The estimates are based on the assumption that ineligible aliens engage in substantial amounts of entitlement fraud in all major public assistance programs.

All recent evidence, stemming from actual experience with SAVE pilot projects in several states, suggests that these estimates are unreasonable and that, in fact, the SAVE Program does not save public funds. Some examples:

- Results of a Houston, Texas pilot project recently reported in the Houston Post indicate that a "sampling of 8,000 benefit applicants at three Houston unemployment offices over a two-month period...found just 42 -- less than one-half of one percent -- whose legal residency was in doubt." Net savings for the state were estimated to be $37,500 at most.

- During a 13-week pilot program in New York, out of 12,238 claims filed by noncitizens during the test period, only 54 ineligible aliens were identified. The program led to cost avoidances of only $51,722 while total payments for the programs during the year were over $1 billion. According to New York State Labor Commissioner Lillian Roberts, there was "no significant benefit for the Department of Labor to participate in the SAVE program."

- In 1985, operating SAVE in all major entitlement programs throughout the state, Colorado identified only 17 ineligible aliens, accruing actual savings of $3,046.

Indeed, extremely low savings have been the rule of recent SAVE pilot projects, and directly contradict the major rationale for moving forward at this time with expansion of the program.

SAVE is apparently not cost-effective for two reasons. First, there does not appear to be significant use of entitlement programs by the undocumented population. All credible research on the issue, including detailed analyses by David North of the New TransCentury Foundation, the Rand Corporation, the Urban Institute, the Lyndon B. Johnson School of Public Affairs at the University of Texas and Marta Tienda of the University of Wisconsin, has concluded that ineligible aliens seldom apply for federal entitlement benefits. The recent SAVE-generated information cited above substantiates these conclusions. Second, the costs of implementing the SAVE program equal or outweigh any benefits related to the system due to data base flaws described above. For example, during a statewide SAVE program in the state of Florida, computerized file information was not available for alien applicants in roughly 40 percent of all verification cases. Thus, in almost one-half of all cases, alien applicant status could not be quickly and efficiently verified; manual checks of paper files were required, and this demands substantial amounts of INS and state personnel time, directly increasing the costs -- particularly labor costs -- associated with the program.

The Congressional Budget Office (CBO), in its analysis of the costs and revenues of the House immigration bill, was very clear in pointing out that cost savings related to nationwide implementation of SAVE would most likely be minimal. In a letter to Representative Rodino dated July 15, 1986, CBO stated that the savings it did project due to the SAVE provisions of the bill "were very uncertain." CBO noted that the costs of implementation of SAVE were underestimated, and that "there is expected to be considerable adjudication, because the INS data are out-of-date and inaccurate...."

D. Nationwide Implementation of SAVE Risks Damaging Individuals

Problems related to the many serious flaws in the SAVE system cited above have already damaged innocent eligible aliens and have disrupted entitlement administration by state and local governments; nationwide implementation would only magnify these problems, and would inevitably harm a significant number of persons in the process.

In a significant number of incidents over the past several years, flaws in INS data bases and misuse of information gathered and provided through SAVE have led to aliens being wrongfully denied benefits to which they were legally entitled. For example:

- An early GAO audit of a California SAVE prototype system found that "out of a total of 136 aliens who were denied... benefits, after a search by INS of local records in California, 50 were later determined...to be legal, five illegal, and 81 with no record...."

- A review of SAVE operations in Chicago resulting from a court order revealed that, out of 600 cases where aliens referred to the INS for status verification did not appear at the INS

District Office, 62, or roughly ten percent, were in fact legally eligible for benefits.

- In Florida, seven Haitians have filed a class action suit against state and federal officials alleging illegal revocation of employment authorization, civil rights violations, and violations of Fifth and Fourteenth Amendment due process and equal protection rights. In this case, the INS allegedly used SAVE verification processes to improperly revoke the work authorization of over 2,300 Haitian applicants. In addition, the INS instructed state authorities to apply different standards of verification for aliens of different nationalities.

In addition, SAVE appears in some cases to deter eligible aliens from receiving benefits to which they are legally entitled. It is our understanding that, notwithstanding stated INS policies, individuals whose status is not "verifiable" through a computer check are at times referred to the INS by state and local personnel to clarify their status. In documented cases, including those listed above, these referred aliens often do not appear, and are therefore denied benefits. This deterrence occurs for a number of reasons. There is an unfortunate legacy of mistrust between Hispanic and other ethnic communities and the INS. It is in no way surprising that a recent legal immigrant, when asked by an AFDC claimstaker to "go to the INS because there might be a problem with your status," might misunderstand, fearing deportation, and choose to avoid contact. In another important example, undocumented parents may fear applying for benefits for their citizen children, who are undeniably eligible. (This problem has already led to litigation in California, where many undocumented households include citizen children.)

These types of problems and deterrence related to SAVE have not only threatened individuals' health, welfare, and civil rights, litigation pursuant to wrongful denial and other disruptions due to SAVE system flaws may generate substantial unexpected costs for state and local governments required to use the system. Already, in key states where SAVE has been tested in pilot programs, administrators have pointed to very serious SAVE-related problems. For example:

- New York State Department of Labor Commissioner Roberts stated, after the state's 13-week pilot project, that the "pilot...established that the data on the INS computer files is extremely unreliable. This led to unnecessary questioning of the status of many individuals admitted legally to this country under special programs, whose legal residence apparently is not recorded on the INS files." According to Roberts, because of the many problems inherent in the current SAVE system, New York "is not interested in continued involvement in the SAVE project."

- Isiah Turner, a Washington State labor commissioner, wrote in February 1986 that "based on my department's experience with the project SAVE concept, I am compelled to point out that there are significant problems.... Until such time as the INS' computerized system is further refined and fully evaluated, mandatory implementation in all states may prove to be counter-productive and not cost

> effective..... It is likely that it will generate legal challenges nationwide which could prevent the future implementation of a more acceptable system."

The main point is this: the flaws now deep-seated in SAVE operations not only affect the system's cost-effectiveness, but also exact a very real and high human toll, denying individuals benefits to which they are entitled and, in recent cases, seriously violating their civil rights.

III. OTHER CONSIDERATIONS

A. Overview

As you know, the inclusion of the SAVE program in the immigration bill during Subcommittee consideration has generated substantial concern among interest groups and Representatives. Representative Barney Frank, himself a distinguished member of the Banking Committee and the Housing Subcommittee, sponsored a series of amendments in the full Judiciary Committee which provide essential protections against some of the most damaging aspects of the SAVE program. The National Council supported the Frank amendments, which were adopted by the Committee and are now included in H.R. 3810. In short, these amendments:

- Eliminated extremely restrictive definitions of the classes of aliens eligible for programs of federal financial assistance included in the Subcommittee bill;
- Codified the practice of "presumptive release," whereby aliens whose status was unclear can receive benefits pending final determination of eligibility;
- Required an administrative hearing process to be made available to persons denied assistance; and
- Provided that SAVE-generated data could not be used for enforcement purposes or in a discriminatory manner.

We believe that, while these protections are essential, they do not fully address the problems associated with SAVE, in several respects. First, the amendments attempt to protect against damages resulting from flaws in the SAVE program, i.e., the INS' incomplete and inaccurate data base, but do not actually resolve these flaws. Second, nationwide implementation would still be required before the system has been adequately tested. Finally, the protections notwithstanding, we believe that the potential for abuse or denial of benefits to eligible persons remains, especially with respect to the programs and constituent groups of interest to the Banking and Aging Committees.

In part because of these concerns, every other Committee with jurisdiction over the SAVE program -- Energy and Commerce, Ways and Means, Education and Labor, and Agriculture -- has adopted virtually identical amendments which would allow federal agencies the option not to implement SAVE pending a review of the program by the General Accounting Office. The National Council fully supported these amendments.

B. Special Considerations for Housing Programs and the Elderly

Assisted housing programs differ in several critical respects from many of the other programs covered by SAVE. First, housing is not, unfortunately, an entitlement, and there is a critical shortage of affordable housing available to low-income persons. Second, eligibility for housing assistance is -- with some exceptions -- determined on a family or household basis, rather than an individual basis. Third, unlike virtually every other program covered by SAVE, a significant proportion of housing programs are administered by non-govermental entities, including private landlords, and private nonprofit or for-profit sponsors of housing developments.

In addition, as you are aware, under regulations recently issued by HUD, assisted housing programs are already covered by an alien verification system not dissimilar from SAVE.

These differences have several important implications for the Banking Committee in its consideration of the SAVE program:

- The "presumptive release" provisions of H.R. 3810 need to be modified to ensure that eligible families for housing do not lose their place in line (either by virtue of being evicted from existing units or being removed from waiting lists) for assisted housing.
- Since there is currently no "fair hearing" process for applicants denied assistance by private owners or operators of some assisted housing programs, a formal appeal process should be adopted to implement the intent of the Frank protections.
- Given that "mixed households," i.e., those that include both documented and undocumented persons would be adversely affected by SAVE, explicit protections for citizen and legal resident aliens in such households should be adopted. Perhaps language similar to the Roybal amendment to H.R. 1, which provides that a household is to be considered eligible if one or more of its members are eligible, could be adopted. Another alternative would provide for a pro-rata provision of benefits based on the number of eligible persons within a given household.

The fact that a significant proportion of assisted housing is administered by private entities raises the potential for discrimination against citizens and legal permanent resident aliens who fit immigrant stereotypes. In this respect, the SAVE program and the HUD regulations are analogous to employer sanctions, in that we believe that at least some private landlords may "play it safe" and refuse to rent units to persons who appear "foreign." As Chairman Roybal is well aware, during House consideration of the Simpson-Mazzoli bill in 1984, the Los Angeles Times documented examples of employers firing or refusing to hire persons they suspected of being undocumented, even though the legislation had not been passed. The same article, which Mr. Roybal entered into the Congressional Record, cited an example of a private landlord in Dallas, Texas, who wrote to his tenants that he suspected were undocumented and asked them to leave his apartments. There would be little or no protection against this kind of discrimination under H.R. 3810.

In addition, one of our major concerns with the SAVE program is the deterrent or "chilling" effect it is likely to have on those persons eligible for benefits.

Neither the discrimination problem nor the deterrent effect of SAVE would be ameliorated by the protections currently in H.R. 3810 or the proposed modifications listed above.

Furthermore, it is estimated that about 40% of the occupants of assisted housing are elderly or handicapped (or both). We share the concern that the SAVE program will impose severe hardships on elderly persons of Hispanic descent, for a number of reasons. Many elderly immigrants would have special difficulties in proving their legal status because:

- They are the most likely group to be either monilingual in their native language or lack full English proficiency; thus, they may not fully understand their rights and obligations under the SAVE program.
- They are likely to have great difficulty in securing documents or proving their status if they do not appear in the initial computer check. Although SAVE provides for a "secondary verification" through manual searches of files, it is likely that pre-1960 INS records the are least accurate and most difficult to verify.
- Finally, these persons, by definition, have low incomes. They have few resources for transportation to INS or another area to obtain their documents, and if denied assistance, have little probability of obtaining decent alternative housing.

We believe that a number of measures can be instituted to address -- if not eliminate -- the special hardships faced by the elderly. First, HUD should provide some type of counseling assistance to those who may not fully understand the verification requirements. Second, the Select Committee on Aging should consider a study of the special problems faced by the elderly in complying with SAVE, with recommendations to the Congress on how these can best be ameliorated.

With respect to the problem of discrimination by private landlords, we suggest that the Banking Committee provide some form of redress for victims. In addition, we believe that HUD should carry out an education campaign directed at private owners and operators of assisted housing to attempt to minimize any confusion regarding their responsibilities in order to minimize the potential for discrimination.

Finally, the National Council believes that it is essential that the implementation of SAVE for housing assistance programs should be made optional. We suggest that the Banking Committee should support an amendment along the lines of those adopted by the other Committees with jurisdiction over SAVE.

IV. CONCLUSION

For the many reasons stated above, the National Council has opposed provisions of H.R. 3810 which would mandate nationwide implementation of the SAVE Program before careful review and corrections of its inadequacies occur. While we support its purpose, we do not believe that, at this point, this system can be fairly and effectively operated on a nationwide scale. However, we recognize that some form of the SAVE program is likely to be included in immigration legislation. We therefore urge you to adopt amendments which would make implementation optional, and that would provide the essential protections described above.

We further recognize the unique situation the Banking Committee faces with respect to SAVE, i.e., that HUD already has a verification system in place. Given the uncertainty regarding the outcome of potential legislative changes and legal challenges to the current HUD system, we believe that the safest course at this time is to support proposals which make implementation of SAVE optional. We pledge to continue to work with both Committees in the future to monitor and assess developments in this area, and, if necessary, to seek appropriate legislative or regulatory responses.

Thank you again for the opportunity to present our views, and for your continuing leadership in addressing these important issues.

for the record
8-6-86

NAHRO National Association of Housing and Redevelopment Officials
1320 Eighteenth Street, Northwest, Washington, DC 20036 (202) 333-2020

August 6, 1986

The Honorable Henry Gonzalez
Chairman
Subcommittee on Housing
and Community Development
Committee on Banking, Finance
and Urban Affairs
2413 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

NAHRO applauds your continuing concern for the Assisted Housing programs and the residents served by those programs. We appreciate this opportunity to offer our views on the impact of the Systematic Alien Verification System on elderly and family tenants.

It is appropriate that a hearing be held on this verification system required by the Immigration Control and Legalization Amendments Act of 1986 (H.R. 3810) since this system will significantly impact residents and the administrators of the housing programs. The issue is not standardization of the verification system for all federally-assisted programs, but what constitutes verification. There is no argument that attempts should be made to standardize the verification system among the several programs; however, there is an issue over the process required for such verification.

An issue addressed by the House of Representatives during its consideration of H.R. 1 should also be addressed in considering H.R. 3810. The House added an amendment to H.R. 1 which permitted individuals who are not citizens or nationals to "declare in writing, under penalty of perjury, the immigration status of such individual, if such individual is not less than 62 years of age." Such a provision should be added to H.R. 3810 in recognition of the fact that many of our citizens over 62 years of age are unable to find official documentation of their immigration status. There should be a willingness to accept a declaration as provided in the H.R. 1 amendatory language subject to further documentation only if there is a serious question as to the validity of the statement.

The bill under consideration establishes a verification system for all federally-assisted programs. A provision should be included which will permit a family or individual to use the verification of one agency as acceptable documentation to other agencies administering federally-assisted programs.

Melvin J. Adams, President **Helen L. Sause**, Senior Vice President **Howard T. Byrd**, Vice President—Commissioners **Joseph E. Gray, Jr.**, Vice President—Community Revitalization and Development, **John Simon**, Vice President—Housing **Joan Smith**, Vice President—Member Services **Wayland R. Smith**, Vice President—Professional Development **Robert W. Maffin**, Executive Director

This would avoid duplicative efforts on the part of both the individual and the administering agency.

A major question raised by the provisions of H.R. 3810 is why is it necessary to verify the information received for all applicants with the Immigration and Naturalization Service. There appears to be an underlying assumption that invalid and/or fraudulent documentation is frequently submitted, therefore requiring 100 percent verification. We seriously question this assumption. It should suffice to require applicants to sign a verification consent form which can be utilized to verify information when a question has been raised as to its validity or when conducting spot checks of documentation submitted. If, however, the Congress feels it is important for such a verification through INS, consideration should be given to exempting current recipients of housing assistance from having to have their immigration status verified through INS. The administrative burden of such a process on public housing authorities across the country is not warranted.

A provision which needs to be modified, particularly for housing assistance programs, is that which precludes the Secretary from delaying or denying financial assistance pending verification from the INS. The PHA should not be forced to give housing or housing assistance to a family only to cause that family to be evicted shortly thereafter upon receipt of information from the INS. Such eviction could lead to an extended administrative process under the lease and grievance procedure and/or possible legal problems with private landlords under the Section 8 or Voucher program. Either no verification should be required or assistance should be delayed pending receipt of verification.

We thank you for your consideration of the points raised in this letter and hope that you will recommend changes to reduce the burdens imposed by the provisions of H.R. 3810. For your information, a similar letter is being sent to Chairman Roybal and members of the House Select Committee on Aging.

Sincerely,

Robert W. Maffin
Executive Director

cc: Members of the House Subcommittee
on Housing and Community Development

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